Environment Protection and Biodiversity Conservation Act 1999

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Volume 1: **sections 1–266**
Volume 2: sections 266B–528
Schedule
Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Environment Protection and Biodiversity Conservation Act 1999* that shows the text of the law as amended and in force on 28 March 2025 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the protection of the environment and the conservation of biodiversity, and for related purposes

Chapter 1—Preliminary

Part 1—Preliminary

1 Short title

This Act may be cited as the *Environment Protection and Biodiversity Conservation Act 1999*.

2 Commencement

(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 12 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

3 Objects of Act

(1) The objects of this Act are:

(a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and

(b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and

(c) to promote the conservation of biodiversity; and

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(ca) to provide for the protection and conservation of heritage; and

(d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and

(e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and

(f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and

(g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

(2) In order to achieve its objects, the Act:

(a) recognises an appropriate role for the Commonwealth in relation to the environment by focussing Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas; and

(b) strengthens intergovernmental co-operation, and minimises duplication, through bilateral agreements; and

(c) provides for the intergovernmental accreditation of environmental assessment and approval processes; and

(d) adopts an efficient and timely Commonwealth environmental assessment and approval process that will ensure activities that are likely to have significant impacts on the environment are properly assessed; and

(e) enhances Australia's capacity to ensure the conservation of its biodiversity by including provisions to:

(i) protect native species (and in particular prevent the extinction, and promote the recovery, of threatened species) and ensure the conservation of migratory species; and

(ii) establish an Australian Whale Sanctuary to ensure the conservation of whales and other cetaceans; and

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(iii) protect ecosystems by means that include the establishment and management of reserves, the recognition and protection of ecological communities and the promotion of off-reserve conservation measures; and

(iv) identify processes that threaten all levels of biodiversity and implement plans to address these processes; and

(f) includes provisions to enhance the protection, conservation and presentation of world heritage properties and the conservation and wise use of Ramsar wetlands of international importance; and

(fa) includes provisions to identify places for inclusion in the National Heritage List and Commonwealth Heritage List and to enhance the protection, conservation and presentation of those places; and

(g) promotes a partnership approach to environmental protection and biodiversity conservation through:

(i) bilateral agreements with States and Territories; and

(ii) conservation agreements with land-holders; and

(iii) recognising and promoting indigenous peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity; and

(iv) the involvement of the community in management planning.

3A Principles of ecologically sustainable development

The following principles are ***principles of ecologically sustainable development***:

(a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;

(b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

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(c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
(d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
(e) improved valuation, pricing and incentive mechanisms should be promoted.

4 Act to bind Crown

This Act binds the Crown in each of its capacities.

5 Application of Act

Extension to external Territories

(1) This Act extends to each external Territory.

Limited extraterritorial application

(2) This Act applies to acts, omissions, matters and things in the Australian jurisdiction, and does not apply to acts, omissions, matters and things outside the Australian jurisdiction except so far as the contrary intention appears.

Application limited to Australians outside exclusive economic zone

(3) A provision of this Act that has effect in relation to a place that is outside the outer limits of the exclusive economic zone and is not on or in the continental shelf applies only in relation to:
(a) Australian nationals; and
(b) Australian permanent residents; and
(d) the Commonwealth; and
(e) Commonwealth agencies; and
(f) Australian aircraft; and
(g) Australian vessels; and

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(h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).

Application to everyone in Australia and exclusive economic zone

(4) A provision of this Act that has effect in relation to a place that is within the outer limits of the exclusive economic zone (whether the place is in the zone or in Australia or an external Territory) or that is on or in the continental shelf applies in relation to:

(a) all persons (including persons who are not Australian citizens); and

(b) all aircraft (including aircraft that are not Australian aircraft); and

(c) all vessels (including vessels that are not Australian vessels).

Note: A reference to Australia or to an external Territory generally includes a reference to the coastal sea of Australia or the Territory (as appropriate). See section 15B of the *Acts Interpretation Act 1901*.

Application in Greater Sunrise special regime area

(4A) Despite subsections (2) and (4), a provision of this Act that has effect in relation to a place that is in or above the Greater Sunrise special regime area applies only in relation to:

(a) Australian nationals who are not nationals or permanent residents of Timor-Leste; and

(b) Australian permanent residents who are not nationals or permanent residents of Timor-Leste; and

(c) the Commonwealth; and

(d) Commonwealth agencies; and

(e) the States; and

(f) the self-governing Territories; and

(g) agencies of the States or self-governing Territories; and

(h) Australian aircraft; and

(i) Australian vessels; and

(j) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels); and

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(k) persons, aircraft or vessels declared under subsection (4B) to be subject to the provision.

(4B) The Minister may, by notifiable instrument, declare all or any of one or more of the following to be subject to a provision of this Act, if the Minister is satisfied that Timor-Leste has agreed to them being subject to the provision as it has effect in relation to a place that is in or above the Greater Sunrise special regime area:

(a) nationals of a foreign country who are not nationals or permanent residents of Timor-Leste;

(b) aircraft with the nationality of a foreign country other than Timor-Leste;

(c) vessels with the nationality of a foreign country other than Timor-Leste;

(d) members of crews (including persons in charge) of aircraft or vessels described in paragraph (b) or (c).

(4C) Despite subsections (2), (4) and (4A), a provision of this Act that has effect in relation to a place that is in or above the Greater Sunrise special regime area does not apply in relation to an act, omission, matter or thing that relates to any of the Petroleum Activities within the meaning of the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018, as in force from time to time.

Note: The Treaty could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

(4D) Subsection 13AB(1) of the *Seas and Submerged Lands Act 1973* does not affect the application of a provision of this Act.

Note: Subsection 13AB(1) of the *Seas and Submerged Lands Act 1973* provides that a law of the Commonwealth does not apply in relation to an act, omission, matter or thing directly or indirectly connected with the exploration of, or exploitation of the natural resources of, the continental shelf in the Greater Sunrise special regime area.

Definitions

(5) In this Act:

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Australian aircraft means:

(a) an aircraft that is owned, possessed or controlled by:
  (i) the Commonwealth or a Commonwealth agency; or
  (ii) a State, a self-governing Territory or an agency of a State or self-governing Territory; or
(b) an aircraft that is registered in Australia.

Australian jurisdiction means the land, waters, seabed and airspace in, under or above:

(a) Australia; or
(b) an external Territory; or
(c) the exclusive economic zone; or
(d) the continental shelf.

Note: A reference to Australia or to an external Territory generally includes a reference to the coastal sea of Australia or the Territory (as appropriate). See section 15B of the *Acts Interpretation Act 1901*.

Australian national means:

(a) an Australian citizen; or
(b) a corporation incorporated in Australia or an external Territory.

Australian permanent resident means a person who:

(a) is not an Australian citizen; and
(b) holds a permanent visa under the *Migration Act 1958*; and
(c) is domiciled in Australia or an external Territory.

Australian vessel means:

(a) a vessel that is owned, possessed or controlled by:
  (i) the Commonwealth or a Commonwealth agency; or
  (ii) a State, a self-governing Territory or an agency of a State or self-governing Territory; or
(b) a vessel that is registered in Australia; or
(c) a vessel that is flying the Australian flag.

Greater Sunrise special regime area has the same meaning as in the *Seas and Submerged Lands Act 1973*.

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national of a foreign country means:

(a) a citizen of the country; or

(b) a corporation incorporated in the country.

6 Extended application of Act to match extended management of fisheries under the *Fisheries Management Act 1991*

(1) This section applies if:

(a) under the *Fisheries Management Act 1991*, a plan of management in force under that Act applies to particular fishing activities in a particular area of water; and

(b) the area of water is not within, or is not wholly within:

(i) the Australian jurisdiction; or

(ii) a Commonwealth area; or

(iii) a Commonwealth marine area; and

(c) the area of water is not:

(i) an area of water, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; or

(ii) an area of water within the limits of a State or the Northern Territory.

(2) If, apart from this subsection, a provision of this Act would, or would not, apply in relation to the fishing activities (or in relation to fish or other things taken in the course of the activities) because the area of water mentioned in subsection (1) is not within, or is not wholly within:

(a) the Australian jurisdiction; or

(b) a Commonwealth area; or

(c) a Commonwealth marine area;

that provision has effect in relation to the fishing activities (and in relation to fish or other things taken in the course of the activities) as if the area of water were wholly within:

(d) the Australian jurisdiction; or

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(e) a Commonwealth area; or

(f) a Commonwealth marine area;

as the case requires.

Note: This section is subject to subsection 5(3).

Example 1: Fishing activities in an area of water that is not a Commonwealth area generally do not contravene Part 13. However, because of this subsection, that Part applies to fishing activities to which this section applies as if the area of water were within a Commonwealth area. The fishing activities may therefore contravene that Part.

Example 2: If fish taken in the course of fishing activities in an area of water that is not within the Australian jurisdiction are brought into Australia, this generally constitutes an import (being an import by way of introduction from the sea) of the fish into Australia, which may contravene Part 13A. However, because of this subsection, that Part applies to the fish as if the area of water were within the Australian jurisdiction. The bringing of the fish into Australia therefore does not constitute an import for the purposes of that Part.

Example 3: This section allows a plan of management to be accredited under Part 13 in respect of the entire area of water to which the plan relates (even if some of the area is outside the Australian jurisdiction, a Commonwealth area or a Commonwealth marine area).

(3) In this section:

fishing has the same meaning as in the *Fisheries Management Act 1991*.

7 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part 2.5 of the *Criminal Code* (which deals with corporate criminal responsibility) is excluded from applying to offences against this Act by subsection 498B(9).

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8 Native title rights not affected

(1) To avoid doubt, nothing in this Act affects the operation of section 211 of the *Native Title Act 1993* in relation to a provision of this Act.

Note: Section 211 of the *Native Title Act 1993* provides that holders of native title rights covering certain activities do not need authorisation required by other laws to engage in those activities.

(2) This Act does not affect the operation of:
(a) the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
(b) the *Native Title Act 1993*.

9 Relationship with other Acts

Aboriginal Land Rights (Northern Territory) Act 1976

(1A) Subsection 70(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* does not prevent a person exercising powers or performing functions or duties under Division 4 or 5 of Part 15, or Division 5 of Part 19, of this Act from entering or remaining on land:
(a) in the Kakadu region or Uluru region; and
(b) in which an Aboriginal Land Trust established under that Act holds an estate in fee simple.

Airports Act 1996 not affected

(1) This Act does not affect the operation of the *Airports Act 1996*.

Antarctic Treaty (Environment Protection) Act 1980 not affected

(2) To avoid doubt, nothing in this Act affects the operation of subsection 7(1) of the *Antarctic Treaty (Environment Protection) Act 1980* or regulations made for the purposes of that subsection.

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10 Relationship with State law

This Act is not intended to exclude or limit the concurrent operation of any law of a State or Territory, except so far as the contrary intention appears.

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Section 11

Chapter 2—Protecting the environment

Part 2—Simplified outline of this Chapter

11 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

This Chapter provides a basis for the Minister to decide whether an action that has, will have or is likely to have a significant impact on certain aspects of the environment should proceed.

It does so by prohibiting a person from taking an action without the Minister having given approval or decided that approval is not needed. (Part 9 deals with the giving of approval.)

Approval is not needed to take an action if any of the following declare that the action does not need approval:

(a) a bilateral agreement between the Commonwealth and the State or Territory in which the action is taken;

(b) a declaration by the Minister.

Also, an action does not need approval if it is taken in accordance with Regional Forest Agreements or it is for a purpose for which, under a zoning plan for a zone made under the *Great Barrier Reef Marine Park Act 1975*, the zone may be used or entered without permission.

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Part 3—Requirements for environmental approvals

Division 1—Requirements relating to matters of national environmental significance

Subdivision A—World Heritage

12 Requirement for approval of activities with a significant impact on a declared World Heritage property

(1) A person must not take an action that:

(a) has or will have a significant impact on the world heritage values of a declared World Heritage property; or

(b) is likely to have a significant impact on the world heritage values of a declared World Heritage property.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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(3) A property has ***world heritage values*** only if it contains natural heritage or cultural heritage. The ***world heritage values*** of the property are the natural heritage and cultural heritage contained in the property.

(4) In this section:

cultural heritage has the meaning given by the World Heritage Convention.

natural heritage has the meaning given by the World Heritage Convention.

13 What is a *declared World Heritage property*?

Properties on World Heritage List

(1) A property included in the World Heritage List is a ***declared World Heritage property*** as long as the property is included in the List.

Properties not yet on World Heritage List

(2) A property specified in a declaration made under section 14 (with any amendments made under section 15) is a ***declared World Heritage property*** for the period for which the declaration is in force.

14 Declaring a property to be a declared World Heritage property

Making declarations

(1) The Minister may declare a specified property to be a declared World Heritage property by notice in the *Gazette* if:

(a) the property is a property submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention as suitable for inclusion in the World Heritage List; or

(b) the Minister is satisfied that:

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(i) the property has, or is likely to have, world heritage values; and

(ii) some or all of the world heritage values of the property are under threat.

Note 1: The Minister may make more than one declaration relating to the same property. See subsection 33(1) of the *Acts Interpretation Act 1901*.

Note 2: The Minister may make an extra declaration to cover property that is an extension of a property previously submitted to the World Heritage Committee.

Consulting State or Territory before making declaration

(2) Before the Minister makes a declaration relating to property wholly or partly within a State or self-governing Territory, the Minister must inform the appropriate Minister of the State or Territory of the proposal to make the declaration, and give him or her a reasonable opportunity to comment on the proposal.

Consultation not required if threat is imminent

(3) However, the Minister need not comply with subsection (2) if:

(a) he or she proposes to make a declaration in the circumstances described in paragraph (1)(b); and

(b) he or she is satisfied that the threat mentioned in subparagraph (1)(b)(ii) is imminent.

Failure to comply with subsection (2)

(4) The validity of a declaration is not affected by a failure to comply with subsection (2) in relation to the making of the declaration.

When a declaration is in force

(5) A declaration:

(a) comes into force when it is published in the *Gazette*; and

(b) remains in force (whether amended under section 15 or not) until the earliest of the following events:

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(i) the end of the period specified in the declaration as the period for which the declaration is in force;
(ii) the revocation of the declaration;
(iii) if the declaration specifies a property submitted to the World Heritage Committee for inclusion in the World Heritage List—the Committee either includes the property in the List or decides the property should not be included in the List.

Specified period for which declaration is in force

(6) The Minister must specify in a declaration the period for which it is to be in force. The period must not be longer than the period the Minister believes:
(a) the World Heritage Committee needs to decide whether or not to include the property in the World Heritage List, in the case of a declaration specifying a property that has been submitted to the Committee for inclusion in the List; or
(b) the Commonwealth needs to decide whether the property has world heritage values and to submit the property to the World Heritage Committee for inclusion in the World Heritage List, in the case of a declaration specifying a property not yet submitted to the Committee for inclusion in the List.

Declarations because of threat in force for a year or less

(7) The Minister must not specify that a declaration of a property is to be in force for more than 12 months if:
(a) the declaration is made in the circumstances described in paragraph (1)(b); and
(b) the property is not a property submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention as suitable for inclusion in the World Heritage List.

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15 Amending or revoking a declaration of a declared World Heritage property

Revoking declarations specifying nominated property

(1) The Minister must, by notice in the *Gazette*, revoke a declaration made under section 14 specifying a property that has been submitted to the World Heritage Committee for inclusion in the World Heritage List if the Commonwealth decides to withdraw the submission of the property for inclusion in the List.

Amending declarations specifying nominated property

(2) The Minister must, by notice in the *Gazette*, amend a declaration made under section 14 specifying a property that has been submitted to the World Heritage Committee for inclusion in the World Heritage List so as to remove from the specification any part of the property that the Commonwealth decides to withdraw from the submission.

Revoking declarations specifying property not yet nominated

(3) The Minister must, by notice in the *Gazette*, revoke a declaration made under section 14 specifying a property that is not submitted to the World Heritage Committee for inclusion in the World Heritage List if:
   (a) the Minister is satisfied that the property does not have world heritage values; or
   (b) the Commonwealth decides not to submit the property to the Committee for inclusion in the List; or
   (c) the Minister is satisfied that none of the world heritage values of the property are under threat.

15A Offences relating to declared World Heritage properties

(1) A person commits an offence if:
   (a) the person takes an action; and

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(b) the action results or will result in a significant impact on the world heritage values of a property; and

(c) the property is a declared World Heritage property.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Strict liability applies to paragraph (1)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) A person commits an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on the world heritage values of a property; and

(c) the property is a declared World Heritage property.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(4) Subsections (1) and (2) do not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

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(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Subdivision AA—National Heritage

15B Requirement for approval of activities with a significant impact on a National Heritage place

(1) A constitutional corporation, the Commonwealth or a Commonwealth agency must not take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) A person must not, for the purposes of trade or commerce:

(a) between Australia and another country; or

(b) between 2 States; or

(c) between a State and Territory; or

(d) between 2 Territories;

take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

(a) for an individual—5,000 penalty units;

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(b) for a body corporate—50,000 penalty units.

(3) A person must not take an action in:

(a) a Commonwealth area; or

(b) a Territory;

that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(4) A person must not take an action that has, will have or is likely to have a significant impact on the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place.

Civil Penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Note: For ***indigenous heritage value***, see section 528.

(5) A person must not take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

Civil Penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(6) Subsection (5) only applies to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, that subsection may not apply to certain actions because of subsection (8).)

(8) Subsections (1) to (5) (inclusive) do not apply to an action if:

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(a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency, Commonwealth or person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the constitutional corporation, Commonwealth agency, Commonwealth or person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

15C Offences relating to National Heritage places

(1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:

(a) the corporation or agency takes an action; and

(b) the action results or will result in a significant impact on the heritage values of a place; and

(c) the heritage values are National Heritage values of the place; and

(d) the place is a National Heritage place.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Strict liability applies to paragraphs (1)(c) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:

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(a) the corporation or agency takes an action; and
(b) the action is likely to have a significant impact on the heritage values of a place; and
(c) the heritage values are National Heritage values of the place; and
(d) the place is a National Heritage place.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraphs (2)(c) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) A person commits an offence if:
(a) the person takes an action; and
(b) the action is taken for the purposes of trade or commerce:
(i) between Australia and another country; or
(ii) between 2 States; or
(iii) between a State and Territory; or
(iv) between 2 Territories; and
(c) the action results or will result in a significant impact on the heritage values of a place; and
(d) the heritage values are National Heritage values of the place; and
(e) the place is a National Heritage place.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3A) Strict liability applies to paragraphs (3)(d) and (e).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) A person commits an offence if:
(a) the person takes an action; and
(b) the action is taken for the purposes of trade or commerce:
(i) between Australia and another country; or
(ii) between 2 States; or
(iii) between a State and Territory; or

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(iv) between 2 Territories; and

(c) the action is likely to have a significant impact on the heritage values of a place; and

(d) the heritage values are National Heritage values of the place; and

(e) the place is a National Heritage place.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(4A) Strict liability applies to paragraphs (4)(d) and (e).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(5) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken in:

(i) a Commonwealth area; or

(ii) a Territory; and

(c) the action results or will result in a significant impact on the heritage values of a place; and

(d) the heritage values are National Heritage values of the place; and

(e) the place is a National Heritage place.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(5A) Strict liability applies to paragraphs (5)(d) and (e).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(6) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken in:

(i) a Commonwealth area; or

(ii) a Territory; and

(c) the action is likely to have a significant impact on the heritage values of a place; and

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(d) the heritage values are National Heritage values of the place; and

(e) the place is a National Heritage place.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(6A) Strict liability applies to paragraphs (6)(d) and (e).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(7) A person commits an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on the heritage values, to the extent that they are indigenous heritage values, of a place; and

(c) the heritage values are National Heritage values of the place; and

(d) the place is a National Heritage place.

Note 1: For ***indigenous heritage value***, see section 528.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(7A) Strict liability applies to paragraphs (7)(c) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(8) A person commits an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on the heritage values, to the extent that they are indigenous heritage values, of a place; and

(c) the heritage values are National Heritage values of the place; and

(d) the place is a National Heritage place.

Note 1: For ***indigenous heritage value***, see section 528.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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(8A) Strict liability applies to paragraphs (8)(c) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(9) A person commits an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on the heritage values of a place; and

(ba) the heritage values are National Heritage values of the place; and

(bb) the place is a National Heritage place; and

(c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(9A) Strict liability applies to paragraphs (9)(ba), (bb) and (c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(10) A person commits an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on the heritage values of a place; and

(ba) the heritage values are National Heritage values of the place; and

(bb) the place is a National Heritage place; and

(c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(10A) Strict liability applies to paragraphs (10)(ba), (bb) and (c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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(13) An offence against any of subsections (1) to (10) (inclusive) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(14) Subsections (9) and (10) only apply to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, those subsections may not apply to certain actions because of subsection (16).)

(16) Subsections (1) to (10) (inclusive) do not apply to an action if:

(a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the constitutional corporation, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

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Subdivision B—Wetlands of international importance

16 Requirement for approval of activities with a significant impact on a declared Ramsar wetland

(1) A person must not take an action that:

(a) has or will have a significant impact on the ecological character of a declared Ramsar wetland; or

(b) is likely to have a significant impact on the ecological character of a declared Ramsar wetland.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

(3) In this Act:

ecological character has the same meaning as in the Ramsar Convention.

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17 What is a *declared Ramsar wetland*?

Areas designated for listing

(1) A wetland, or part of a wetland, designated by the Commonwealth under Article 2 of the Ramsar Convention for inclusion in the List of Wetlands of International Importance kept under that Article is a ***declared Ramsar wetland*** as long as the wetland or part is not:

(a) excluded by the Commonwealth from the boundaries of a wetland in the List under that Article; or

(b) deleted by the Commonwealth from the List under that Article.

Areas declared by the Minister

(2) A wetland, or part of a wetland, is also a ***declared Ramsar wetland*** for the period for which a declaration of the wetland as a declared Ramsar wetland is in force.

17A Making and revoking declarations of wetlands

Declaring threatened wetlands of international importance

(1) The Minister may declare a specified wetland to be a declared Ramsar wetland by notice in the *Gazette* if the Minister is satisfied that:

(a) the wetland is of international significance or is likely to be of international significance because of its ecology, botany, zoology, limnology or hydrology; and

(b) the ecological character of some or all of the wetland is under threat.

Note: The Minister may make more than one declaration of the same wetland under this section. See subsection 33(1) of the *Acts Interpretation Act 1901*.

Consulting State or Territory before making declaration

(2) Before the Minister makes a declaration relating to a wetland wholly or partly within a State or self-governing Territory, the

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Minister must inform the appropriate Minister of the State or Territory of the proposal to make the declaration, and give him or her a reasonable opportunity to comment on the proposal.

Consultation not required if threat is imminent

(3) However, the Minister need not comply with subsection (2) if he or she is satisfied that the threat mentioned in paragraph (1)(b) is imminent.

Failure to comply with subsection (2)

(4) The validity of a declaration is not affected by a failure to comply with subsection (2) in relation to the making of the declaration.

When a declaration is in force

(5) A declaration comes into force on the day it is published in the *Gazette* and remains in force for the period specified in the declaration, unless it is revoked earlier.

Specifying period for which declaration is in force

(6) The Minister must specify in a declaration the period for which it is to be in force. The period must not be longer than the shorter of the following periods:

(a) the period the Minister believes the Commonwealth needs to:

(i) decide whether the wetland is of international significance in terms of ecology, botany, zoology, limnology or hydrology; and

(ii) designate the wetland for inclusion in the List of Wetlands of International Importance kept under Article 2 of the Ramsar Convention;

(b) 12 months.

Revocation of declaration of threatened wetland

(7) The Minister must, by notice in the *Gazette*, revoke a declaration of a wetland if:

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(a) the Minister is satisfied that the wetland is not of international significance because of its ecology, botany, zoology, limnology or hydrology; or

(b) the Minister is satisfied that there is no longer a threat to any part of the wetland.

17B Offences relating to declared Ramsar wetlands

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on the ecological character of a wetland; and

(c) the wetland is a declared Ramsar wetland.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Strict liability applies to paragraph (1)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) A person commits an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on the ecological character of a wetland; and

(c) the wetland is a declared Ramsar wetland.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

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Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(4) Subsections (1) and (2) do not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Subdivision C—Listed threatened species and communities

18 Actions with significant impact on listed threatened species or endangered community prohibited without approval

Species that are extinct in the wild

(1) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the extinct in the wild category; or

(b) is likely to have a significant impact on a listed threatened species included in the extinct in the wild category.

Civil penalty:

(a) for an individual—5,000 penalty units;

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(b) for a body corporate—50,000 penalty units.

Critically endangered species

(2) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the critically endangered category; or

(b) is likely to have a significant impact on a listed threatened species included in the critically endangered category.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Endangered species

(3) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the endangered category; or

(b) is likely to have a significant impact on a listed threatened species included in the endangered category.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Vulnerable species

(4) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the vulnerable category; or

(b) is likely to have a significant impact on a listed threatened species included in the vulnerable category.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

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Critically endangered communities

(5) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened ecological community included in the critically endangered category; or

(b) is likely to have a significant impact on a listed threatened ecological community included in the critically endangered category.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Endangered communities

(6) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened ecological community included in the endangered category; or

(b) is likely to have a significant impact on a listed threatened ecological community included in the endangered category.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

18A Offences relating to threatened species etc.

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on:

(i) a species; or

(ii) an ecological community; and

(c) the species is a listed threatened species, or the community is a listed threatened ecological community.

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Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Strict liability applies to paragraph (1)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) A person commits an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on:

(i) a species; or

(ii) an ecological community; and

(c) the species is a listed threatened species, or the community is a listed threatened ecological community.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(4) Subsections (1) and (2) do not apply to an action if:

(a) the listed threatened species subject to the significant impact (or likely to be subject to the significant impact) is:

(i) a species included in the extinct category of the list under section 178; or

(ii) a conservation dependent species; or

(b) the listed threatened ecological community subject to the significant impact (or likely to be subject to the significant

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impact) is an ecological community included in the vulnerable category of the list under section 181.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Note 2: Section 19 sets out other defences. The defendant bears an evidential burden in relation to the matters in that section too. See subsection 13.3(3) of the *Criminal Code*.

19 Certain actions relating to listed threatened species and listed threatened ecological communities not prohibited

(1) A subsection of section 18 or 18A relating to a listed threatened species does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of any subsection of that section that relates to a listed threatened species.

(2) A subsection of section 18 or 18A relating to a listed threatened ecological community does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of either subsection of that section that relates to a listed threatened ecological community.

(3) A subsection of section 18 or 18A does not apply to an action if:

(a) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or

(b) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(c) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

(4) A subsection of section 18 or 18A does not apply to an action, to the extent that it is covered by subsection 517A(7).

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Subdivision D—Listed migratory species

20 Requirement for approval of activities with a significant impact on a listed migratory species

(1) A person must not take an action that:

(a) has or will have a significant impact on a listed migratory species; or

(b) is likely to have a significant impact on a listed migratory species.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

20A Offences relating to listed migratory species

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on a species; and

(c) the species is a listed migratory species.

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Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Strict liability applies to paragraph (1)(c).

Note: For strict liability , see section 6.1 of the *Criminal Code*.

(2) A person commits an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on a species; and

(c) the species is a listed migratory species.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraph (2)(c).

Note: For strict liability , see section 6.1 of the *Criminal Code*.

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(4) Subsections (1) and (2) do not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in

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the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

20B Certain actions relating to listed migratory species not prohibited

A subsection of section 20 or 20A does not apply to an action, to the extent that it is covered by subsection 517A(7).

Subdivision E—Protection of the environment from nuclear actions

21 Requirement for approval of nuclear actions

(1) A constitutional corporation, the Commonwealth or Commonwealth agency must not take a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

(a) for an individual—5,000 penalty units;
(b) for a body corporate—50,000 penalty units.

(2) A person must not, for the purposes of trade or commerce:

(a) between Australia and another country; or
(b) between 2 States; or
(c) between a State and a Territory; or
(d) between 2 Territories;

take a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

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(a) for an individual—5,000 penalty units;
(b) for a body corporate—50,000 penalty units.

(3) A person must not take in a Territory a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:
(a) for an individual—5,000 penalty units;
(b) for a body corporate—50,000 penalty units.

(4) Subsections (1), (2) and (3) do not apply to an action if:
(a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency, Commonwealth or person is in operation under Part 9 for the purposes of this section; or
(b) Part 4 lets the constitutional corporation, Commonwealth agency, Commonwealth or person take the action without an approval under Part 9 for the purposes of this section; or
(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

22 What is a *nuclear action*?

(1) In this Act:

nuclear action means any of the following:
(a) establishing or significantly modifying a nuclear installation;
(b) transporting spent nuclear fuel or radioactive waste products arising from reprocessing;
(c) establishing or significantly modifying a facility for storing radioactive waste products arising from reprocessing;

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(d) mining or milling uranium ore;
(e) establishing or significantly modifying a large-scale disposal facility for radioactive waste;
(f) de-commissioning or rehabilitating any facility or area in which an activity described in paragraph (a), (b), (c), (d) or (e) has been undertaken;
(g) any other action prescribed by the regulations.

nuclear installation means any of the following:
(a) a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and sub-critical assemblies);
(b) a plant for preparing or storing fuel for use in a nuclear reactor as described in paragraph (a);
(c) a nuclear waste storage or disposal facility with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section;
(d) a facility for production of radioisotopes with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section.

Note: A nuclear waste storage or disposal facility could include a facility for storing spent nuclear fuel, depending on the regulations.

radioactive waste means radioactive material for which no further use is foreseen.

reprocessing means a process or operation to extract radioactive isotopes from spent nuclear fuel for further use.

spent nuclear fuel means nuclear fuel that has been irradiated in a nuclear reactor core and permanently removed from the core.

(2) In this Act:

large-scale disposal facility for radioactive waste means, if regulations are made for the purposes of this definition, a facility prescribed by the regulations.

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22A Offences relating to nuclear actions

(1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:

(a) the corporation or agency takes a nuclear action; and

(b) the nuclear action results or will result in a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:

(a) the corporation or agency takes a nuclear action; and

(b) the nuclear action is likely to have a significant impact on the environment and the corporation or agency is reckless as to that fact.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3) A person commits an offence if:

(a) the person takes a nuclear action; and

(b) the nuclear action is taken for the purposes of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; and

(c) the nuclear action results or will result in a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(4) A person commits an offence if:

(a) the person takes a nuclear action; and

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(b) the nuclear action is taken for the purposes of trade or commerce:
(i) between Australia and another country; or
(ii) between 2 States; or
(iii) between a State and a Territory; or
(iv) between 2 Territories; and
(c) the nuclear action is likely to have a significant impact on the environment and the person is reckless as to that fact.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(5) A person commits an offence if:
(a) the person takes a nuclear action; and
(b) the nuclear action is taken in a Territory; and
(c) the nuclear action results or will result in a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(6) A person commits an offence if:
(a) the person takes a nuclear action; and
(b) the nuclear action is taken in a Territory; and
(c) the nuclear action is likely to have a significant impact on the environment and the person is reckless as to that fact.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(7) An offence against subsection (1), (2), (3), (4), (5) or (6) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

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(8) Subsections (1), (2), (3), (4), (5) and (6) do not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Subdivision F—Marine environment

23 Requirement for approval of activities involving the marine environment

Actions in Commonwealth marine areas affecting the environment

(1) A person must not take in a Commonwealth marine area an action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Actions outside Commonwealth marine areas affecting those areas

(2) A person must not take outside a Commonwealth marine area but in the Australian jurisdiction an action that:

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(a) has or will have a significant impact on the environment in a Commonwealth marine area; or

(b) is likely to have a significant impact on the environment in a Commonwealth marine area.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Fishing in State or Territory waters managed by Commonwealth

(3) A person must not take in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory an action:

(a) that:

(i) is fishing (as defined in the *Fisheries Management Act 1991*); and

(ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and

(b) that:

(i) has or will have a significant impact on the environment in those coastal waters; or

(ii) is likely to have a significant impact on the environment in those coastal waters.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Exceptions to prohibitions

(4) Subsection (1), (2) or (3) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or

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(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the person taking the action is the Commonwealth or a Commonwealth agency; or

(e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

Exception—fishing in Commonwealth waters managed by State

(5) Subsection (1) does not apply to an action if the action:

(a) is fishing (as defined in the *Fisheries Management Act 1991*); and

(b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and

(c) is permitted under a law of the State or Territory.

Exception—fishing outside Commonwealth marine areas

(6) Subsection (2) does not apply to an action that:

(a) is fishing (as defined in the *Fisheries Management Act 1991*); and

(b) is permitted under a law of a State or self-governing Territory.

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24 What is a *Commonwealth marine area*?

Each of the following is a ***Commonwealth marine area***:

(a) any waters of the sea inside the seaward boundary of the exclusive economic zone, except:
  (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
  (ii) waters within the limits of a State or the Northern Territory;

(b) the seabed under waters covered by paragraph (a);

(c) airspace over waters covered by paragraph (a);

(d) any waters over the continental shelf, except:
  (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
  (ii) waters within the limits of a State or the Northern Territory; and
  (iii) waters covered by paragraph (a);

(e) any seabed under waters covered by paragraph (d);

(f) any airspace over waters covered by paragraph (d);

(g) any other area of sea or seabed that is included in a Commonwealth reserve.

24A Offences relating to marine areas

Actions in Commonwealth marine areas affecting the environment

(1) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken in a Commonwealth marine area; and
  (c) the action results or will result in a significant impact on the environment.

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Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Strict liability applies to paragraph (1)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Actions in Commonwealth marine areas likely to affect the environment

(2) A person commits an offence if:
(a) the person takes an action; and
(b) the action is taken in a Commonwealth marine area; and
(c) the action is likely to have a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraph (2)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Actions outside Commonwealth marine areas affecting those areas

(3) A person commits an offence if:
(a) the person takes an action; and
(b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
(c) the action results or will result in a significant impact on the environment in an area; and
(d) the area is a Commonwealth marine area.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3A) Strict liability applies to paragraphs (3)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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Actions likely to affect environment in Commonwealth marine areas

(4) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
  (c) the action is likely to have a significant impact on the environment in an area; and
  (d) the area is a Commonwealth marine area.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(4A) Strict liability applies to paragraphs (4)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Fishing with impact in State or Territory waters managed by Commonwealth

(5) A person commits an offence if:
  (a) the person takes an action that:
    (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
    (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
  (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
  (c) the action results or will result in a significant impact on the environment in those coastal waters.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(5A) Strict liability applies to paragraph (5)(b).

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

Fishing with likely impact in State or Territory waters managed by Commonwealth

(6) A person commits an offence if:

(a) the person takes an action that:

(i) is fishing (as defined in the *Fisheries Management Act 1991*); and

(ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and

(b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and

(c) the action is likely to have a significant impact on the environment in those coastal waters.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(6A) Strict liability applies to paragraph (6)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Penalties

(7) An offence against subsection (1), (2), (3), (4), (5) or (6) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

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Defences—general

(8) Subsection (1), (2), (3), (4), (5) or (6) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Defence—fishing in Commonwealth waters managed by State

(9) Subsections (1) and (2) do not apply to an action if the action:

(a) is fishing (as defined in the *Fisheries Management Act 1991*); and

(b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and

(c) is permitted under a law of the State or Territory.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Defence—fishing outside Commonwealth marine areas

(10) Subsections (3) and (4) do not apply to an action that:

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(a) is fishing (as defined in the *Fisheries Management Act 1991*); and

(b) is permitted under a law of a State or self-governing Territory.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Subdivision FA—Great Barrier Reef Marine Park

24B Requirement for approval of activities in the Great Barrier Reef Marine Park

Actions in Great Barrier Reef Marine Park affecting the environment

(1) A person must not take in the Great Barrier Reef Marine Park an action that has, will have or is likely to have, a significant impact on the environment.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Actions outside Great Barrier Reef Marine Park affecting the environment in the Marine Park

(2) A person must not take outside the Great Barrier Reef Marine Park but in the Australian jurisdiction an action that:

(a) has or will have a significant impact on the environment in the Great Barrier Reef Marine Park; or

(b) is likely to have a significant impact on the environment in the Great Barrier Reef Marine Park.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

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Exceptions to prohibition

(3) Subsection (1) or (2) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the person taking the action is the Commonwealth or a Commonwealth agency; or

(e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

24C Offences relating to Great Barrier Reef Marine Park

Actions in Great Barrier Reef Marine Park affecting the environment

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken in the Great Barrier Reef Marine Park; and

(c) the action results or will result in a significant impact on the environment.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

(2) Strict liability applies to paragraph (1)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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Actions in Great Barrier Reef Marine Park likely to affect the environment

(3) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken in the Great Barrier Reef Marine Park; and
  (c) the action is likely to have a significant impact on the environment.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

(4) Strict liability applies to paragraph (3)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Actions outside Great Barrier Reef Marine Park affecting environment in the Marine Park

(5) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken outside the Great Barrier Reef Marine Park but in the Australian jurisdiction; and
  (c) the action results in or will result in a significant impact on the environment in an area; and
  (d) the area is the Great Barrier Reef Marine Park.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

(6) Strict liability applies to paragraphs (5)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Actions outside Great Barrier Reef Marine Park likely to affect environment in the Marine Park

(7) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken outside the Great Barrier Reef Marine Park but in the Australian jurisdiction; and

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(c) the action is likely to have a significant impact on the environment in an area; and
(d) the area is the Great Barrier Reef Marine Park.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

(8) Strict liability applies to paragraphs (7)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Defences

(9) Subsection (1), (3), (5) or (7) does not apply to an action if:
(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
(c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
(d) the person taking the action is the Commonwealth or a Commonwealth agency; or
(e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

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Subdivision FB—Protection of water resources from unconventional gas development and large coal mining development

24D Requirement for approval of developments with a significant impact on water resources

(1) A constitutional corporation, the Commonwealth or a Commonwealth agency must not take an action if:

(a) the action involves:

(i) unconventional gas development; or

(ii) large coal mining development; and

(b) the action:

(i) has or will have a significant impact on a water resource; or

(ii) is likely to have a significant impact on a water resource.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) A person must not take an action if:

(a) the action involves:

(i) unconventional gas development; or

(ii) large coal mining development; and

(b) the action is taken for the purposes of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and Territory; or

(iv) between 2 Territories; and

(c) the action:

(i) has or will have a significant impact on a water resource; or

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(ii) is likely to have a significant impact on a water resource.

Civil penalty:
(a) for an individual—5,000 penalty units;
(b) for a body corporate—50,000 penalty units.

(3) A person must not take an action if:
(a) the action involves:
(i) unconventional gas development; or
(ii) large coal mining development; and
(b) the action is taken in:
(i) a Commonwealth area; or
(ii) a Territory; and
(c) the action:
(i) has or will have a significant impact on a water resource; or
(ii) is likely to have a significant impact on a water resource.

Civil penalty:
(a) for an individual—5,000 penalty units;
(b) for a body corporate—50,000 penalty units.

(4) Subsections (1) to (3) do not apply to an action if:
(a) an approval of the taking of the action by the constitutional corporation, Commonwealth, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or
(b) Part 4 lets the constitutional corporation, Commonwealth, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or
(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in

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the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

(5) A person who wishes to rely on subsection (4) in proceedings for a contravention of a civil penalty provision bears an evidential burden in relation to the matters in that subsection.

24E Offences relating to water resources

(1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:

(a) the corporation or agency takes an action involving:

(i) unconventional gas development; or

(ii) large coal mining development; and

(b) the action:

(i) results or will result in a significant impact on a water resource; or

(ii) is likely to have a significant impact on a water resource.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note 1: An executive officer of a body corporate convicted of an offence against this subsection may also commit an offence against section 495.

Note 2: If a person takes an action on land that contravenes this subsection, a landholder may commit an offence against section 496C.

(2) A person commits an offence if:

(a) the person takes an action involving:

(i) unconventional gas development; or

(ii) large coal mining development; and

(b) the action is taken for the purposes of trade or commerce:

(i) between Australia and another country; or

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(ii) between 2 States; or
(iii) between a State and Territory; or
(iv) between 2 Territories; and

(c) the action:
(i) has or will have a significant impact on a water resource; or
(ii) is likely to have a significant impact on a water resource.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note 1: An executive officer of a body corporate convicted of an offence against this subsection may also commit an offence against section 495.

Note 2: If a person takes an action on land that contravenes this subsection, a landholder may commit an offence against section 496C.

(3) A person commits an offence if:
(a) the person takes an action involving:
(i) unconventional gas development; or
(ii) large coal mining development; and
(b) the action is taken in:
(i) a Commonwealth area; or
(ii) a Territory; and
(c) the action:
(i) has or will have a significant impact on a water resource; or
(ii) is likely to have a significant impact on a water resource.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note 1: An executive officer of a body corporate convicted of an offence against this subsection may also commit an offence against section 495.

Note 2: If a person takes an action on land that contravenes this subsection, a landholder may commit an offence against section 496C.

(4) Subsections (1) to (3) do not apply to an action if:

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(a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the constitutional corporation, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

Subdivision G—Additional matters of national environmental significance

25 Requirement for approval of prescribed actions

(1) A person must not take an action that is prescribed by the regulations for the purposes of this subsection.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the

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action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

(3) Before the Governor-General makes regulations prescribing an action for the purposes of subsection (1), the Minister (the ***Environment Minister***) must:

(a) inform the appropriate Minister of each State and self-governing Territory of the proposal to prescribe:

(i) the action; and

(ii) a thing as matter protected by this section in relation to the action; and

(b) invite the appropriate Minister of each State and self-governing Territory to give the Environment Minister comments on the proposal within a specified period of at least 28 days; and

(c) consider the comments (if any); and

(d) if comments have been given as described in paragraph (b)—take all reasonable steps to consult the appropriate Minister of each State and self-governing Territory with a view to agreeing on:

(i) the action to be prescribed; and

(ii) the thing to be prescribed as matter protected by this section in relation to the action.

Note: Section 34 provides that the matter protected by this section is a thing prescribed by the regulations in relation to the action.

(3A) To avoid doubt, regulations may be made for the purposes of this section even if no agreement is reached on the matters described in paragraph (3)(d).

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(4) The regulations may prescribe different things as matter protected by this section in relation to different actions prescribed for the purposes of subsection (1).

(5) This section applies only to actions:

(a) taken in a Territory or a place acquired by the Commonwealth for public purposes (within the meaning of section 52 of the Constitution); or

(b) taken in a Commonwealth marine area; or

(c) taken for the purpose of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; or

(d) taken by a constitutional corporation; or

(e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

(6) Regulations prescribing an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.

Subdivision H—Actions that are taken to be covered by this Division

25A Actions that are taken to be covered by this Division

(1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.

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(3) Regulations made for the purposes of subsection (1) may only specify actions:
  (a) taken in a Territory; or
  (b) taken in a Commonwealth marine area; or
  (c) taken for the purpose of trade or commerce:
    (i) between Australia and another country; or
    (ii) between 2 States; or
    (iii) between a State and a Territory; or
    (iv) between 2 Territories; or
  (d) taken by a constitutional corporation; or
  (e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

(4) Regulations specifying an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.

(5) In this section:

regulatory provision means:
  (a) a civil penalty provision set out in this Division; or
  (b) a provision of this Division that creates an offence.

Subdivision HA—Limitation on liability for actions of third parties

25AA Limitation on liability for actions of third parties

(1) A provision mentioned in subsection (2) or (3) does not apply to an action (the ***primary action***) if:
  (a) a person (the ***primary person***) takes the action; and
  (b) as a consequence of the primary action, another person (the ***secondary person***) takes another action (the ***secondary action***); and
  (c) the secondary action is not taken at the direction or request of the primary person; and

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(d) the significant impact referred to in the provision is a consequence of the secondary action.

Defence to offences

(2) For the purposes of subsection (1), the following provisions do not apply to the primary action:

(a) subsections 15A(1) and (2);
(b) subsections 15C(1) to (10);
(c) subsections 17B(1) and (2);
(d) subsections 18A(1) and (2);
(e) subsections 20A(1) and (2);
(f) subsections 22A(1) to (6);
(g) subsections 24A(1) to (6);
(h) subsections 24C(1), (3), (5) and (7);
(i) subsections 24E(1) to (3).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception to civil penalties

(3) For the purposes of subsection (1), the following provisions do not apply to the primary action:

(a) subsection 12(1);
(b) subsections 15B(1) to (5) and (7);
(c) subsection 16(1);
(d) subsections 18(1) to (6);
(e) subsection 20(1);
(f) subsections 21(1) to (3);
(g) subsections 23(1) to (3);
(ga) subsections 24B(1) and (2);
(gb) subsections 24D(1) to (3);
(h) subsection 25(1).

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Subdivision I—Evidentiary certificates

25B Evidentiary certificates

Contravention

(1) The Minister may issue a written certificate:
  (a) stating that a specified person has contravened, or is contravening, a specified civil penalty provision set out in this Division; and
  (b) setting out particulars of that contravention.

(2) The Minister may issue a certificate under subsection (1) relating to a particular contravention if the Minister has reason to believe that the person concerned has committed, or is committing, the contravention.

(3) To avoid doubt, a certificate under subsection (1) may be issued even if any relevant proceedings under section 475, 480A, 480K or 481 have been instituted.

Proposal

(4) The Minister may issue a written certificate stating that, if a specified person were to carry out a proposal to engage in specified conduct, that conduct would contravene a specified civil penalty provision set out in this Division.

(5) The Minister may issue a certificate under subsection (4) if the Minister has reason to believe that:
  (a) the person proposes to engage in the conduct concerned; and
  (b) the conduct would contravene the civil penalty provision concerned.

(6) To avoid doubt, a certificate under subsection (4) may be issued even if any relevant proceedings under section 475 have been instituted.

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25C Certificate to be given to person

As soon as practicable after issuing a certificate under subsection 25B(1) or (4), the Minister must give a copy of the certificate to the person concerned.

25D Evidentiary effect of certificate

(1) In any proceedings under section 475, 480A, 480K or 481, a certificate under subsection 25B(1) is prima facie evidence of the matters in the certificate.

(2) In any proceedings under section 475, a certificate under subsection 25B(4) is prima facie evidence of the matters in the certificate.

(3) A document purporting to be a certificate under subsection 25B(1) or (4) must, unless the contrary is established, be taken to be such a certificate and to have been properly issued.

(4) The Minister may certify that a document is a copy of a certificate under subsection 25B(1) or (4).

(5) This section applies to the certified copy as if it were the original.

25E Variation of certificate

(1) The Minister may vary a certificate under subsection 25B(1) or (4) so long as the variation is of a minor nature.

(2) If a certificate is varied, the Minister must give the person concerned a written notice setting out the terms of the variation.

25F Revocation of certificate

(1) The Minister may revoke a certificate under subsection 25B(1) or (4).

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(2) If a certificate is revoked, the Minister must give the person concerned a written notice stating that the certificate has been revoked.

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Division 2—Protection of the environment from proposals involving the Commonwealth

Subdivision A—Protection of environment from actions involving Commonwealth land

26 Requirement for approval of activities involving Commonwealth land

Actions on Commonwealth land

(1) A person must not take on Commonwealth land an action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:
(a) for an individual—1,000 penalty units;
(b) for a body corporate—10,000 penalty units.

Actions outside Commonwealth land affecting that land

(2) A person must not take outside Commonwealth land an action that:
(a) has or will have a significant impact on the environment on Commonwealth land; or
(b) is likely to have a significant impact on the environment on Commonwealth land.

Civil penalty:
(a) for an individual—1,000 penalty units;
(b) for a body corporate—10,000 penalty units.

Exceptions to prohibitions

(3) Subsection (1) or (2) does not apply to an action if:
(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or

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(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or

(d) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process); or

(f) the person taking the action is the Commonwealth or a Commonwealth agency.

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of ***environment*** in section 528.

Note 2: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

27 What is *Commonwealth land*?

Commonwealth land is so much of a Commonwealth area as is not a Commonwealth marine area.

27A Offences relating to Commonwealth land

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken on Commonwealth land; and

(c) the action results or will result in a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Strict liability applies to paragraph (1)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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(2) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken on Commonwealth land; and
  (c) the action is likely to have a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraph (2)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken outside Commonwealth land but in the Australian jurisdiction; and
  (c) the action results or will result in a significant impact on the environment in an area; and
  (d) the area is Commonwealth land.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3A) Strict liability applies to paragraphs (3)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken outside Commonwealth land but in the Australian jurisdiction; and
  (c) the action is likely to have a significant impact on the environment in an area; and
  (d) the area is Commonwealth land.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(4A) Strict liability applies to paragraphs (4)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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(5) An offence against subsection (1), (2), (3) or (4) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(6) Subsection (1), (2), (3) or (4) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process); or

(e) the person taking the action is a Commonwealth agency.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Note 2: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of ***environment*** in section 528.

Note 3: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

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Subdivision AA—Protection of Commonwealth Heritage places outside the Australian jurisdiction

27B Requirement for approval of actions with significant impact on Commonwealth Heritage places overseas

(1) A person must not take outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment in a Commonwealth Heritage place outside the Australian jurisdiction.

Civil Penalty:

(a) for an individual—1,000 penalty units;

(b) for a body corporate—10,000 penalty units.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Subdivision F of Division 1 and Subdivision A of this Division protect the environment in Commonwealth Heritage places inside the Australian jurisdiction because those places are in Commonwealth marine areas or on Commonwealth land.

27C Offences relating to Commonwealth Heritage places overseas

(1) A person commits an offence if:

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(a) the person takes an action; and
(b) the action is taken outside the Australian jurisdiction; and
(c) the action results or will result in a significant impact on the environment in a place; and
(ca) the place is a Commonwealth Heritage place; and
(d) the place is outside the Australian jurisdiction.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Strict liability applies to paragraph (1)(ca).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) A person commits an offence if:
(a) the person takes an action; and
(b) the action is taken outside the Australian jurisdiction; and
(c) the action is likely to have a significant impact on the environment in a place; and
(d) the place is a Commonwealth Heritage place; and
(e) the place is outside the Australian jurisdiction.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraph (2)(d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

(4) Section 14.1 (standard geographical jurisdiction) of the *Criminal Code* does not apply to an offence created by this section.

Note: Section 5 affects the extra-territorial operation of this section.

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(5) Subsections (1) and (2) do not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Subdivision B—Protection of the environment from Commonwealth actions

28 Requirement for approval of activities of Commonwealth agencies significantly affecting the environment

(1) The Commonwealth or a Commonwealth agency must not take inside or outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment inside or outside the Australian jurisdiction.

Civil penalty:

(a) for a Commonwealth agency that is an individual—1,000 penalty units;

(b) for a Commonwealth agency that is a body corporate—10,000 penalty units.

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place from an action taken by the Commonwealth or a Commonwealth agency, because the

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heritage values of a place are part of the environment. See the definition of ***environment*** in section 528.

Note 2: This section does not apply to decisions to authorise activities. See Subdivision A of Division 1 of Part 23.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the Commonwealth or Commonwealth agency is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the Commonwealth or Commonwealth agency take the action without an approval under Part 9 for the purposes of this section; or

(c) the action is one declared by the Minister in writing to be an action to which this section does not apply; or

(d) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

(3) The Minister may make a written declaration that actions are actions to which this section does not apply, but only if he or she is satisfied that it is necessary in the interests of:

(a) Australia's defence or security; or

(b) preventing, mitigating or dealing with a national emergency, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates.

(4) The Minister may make a written declaration that all actions, or a specified class of actions, taken by a specified Commonwealth agency are actions to which this section does not apply.

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(5) The Minister may make a declaration under subsection (4) relating to a Commonwealth agency's actions only if he or she is satisfied that:

(a) in taking the actions to which the declaration relates, the agency must comply with the law of a State or Territory (including a law of a State that is applied to a Commonwealth place by virtue of the *Commonwealth Places (Application of Laws) Act 1970*), that has either or both of the following objects (whether express or implied):

(i) to protect the environment;

(ii) to promote the conservation and ecologically sustainable use of natural resources; and

(b) the impacts that the actions have, will have or are likely to have on the environment, are adequately addressed under the State or Territory law.

Subdivision C—Actions that are taken to be covered by this Division

28AA Actions that are taken to be covered by this Division

(1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.

(3) In this section:

regulatory provision means:

(a) a civil penalty provision set out in this Division; or

(b) a provision of this Division that creates an offence.

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Subdivision D—Limitation on liability for actions of third parties

28AB Limitation on liability for actions of third parties

(1) A provision mentioned in subsection (2) or (3) does not apply to an action (the ***primary action***) if:

(a) a person (the ***primary person***) takes the action; and

(b) as a consequence of the primary action, another person (the ***secondary person***) takes another action (the ***secondary action***); and

(c) the secondary action is not taken at the direction or request of the primary person; and

(d) the significant impact referred to in the provision is a consequence of the secondary action.

Defence to offences

(2) For the purposes of subsection (1), the following provisions do not apply to the primary action:

(a) subsections 27A(1) to (4);

(b) subsections 27C(1) and (2).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception to civil penalties

(3) For the purposes of subsection (1), the following provisions do not apply to the primary action:

(a) subsections 26(1) and (2);

(b) subsection 27B(1);

(c) subsection 28(1).

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Part 4—Cases in which environmental approvals are not needed

Division 1—Actions covered by bilateral agreements

29 Actions declared by agreement not to need approval

(1) A person may take an action described in a provision of Part 3, other than section 24D or 24E, without an approval under Part 9 for the purposes of the provision if:

(a) the action is taken in a State or self-governing Territory; and

(b) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or Territory not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with a management arrangement or authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the bilateral agreement); and

(c) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and

(d) either of the following applies:

(i) in the case of a bilaterally accredited management arrangement—the management arrangement is in force under a law of the State or Territory identified in or under the bilateral agreement;

(ii) in the case of a bilaterally accredited authorisation process—the authorisation process is set out in a law of the State or Territory, and the law and the authorisation process are identified in or under the bilateral agreement; and

(e) the action is taken in accordance with the bilaterally accredited management arrangement or bilaterally accredited authorisation process.

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Note 1: Section 46 deals with bilateral agreements making declarations described in paragraph (1)(b).

Note 2: Division 3 of Part 5 explains how the operation of a bilateral agreement may be ended or suspended. Also, under section 49, bilateral agreements do not operate in relation to actions in Commonwealth areas or in the Great Barrier Reef Marine Park, or actions taken by the Commonwealth or a Commonwealth agency, unless they expressly provide that they do.

(2) If the action is to be taken in 2 or more States or self-governing Territories, this section does not operate unless it operates in relation to each of those States or Territories.

30 Extended operation in State and Northern Territory waters

(1) Section 29 applies to an action taken on, over or under the seabed vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* in the same way that it applies to an action taken in the State.

(2) Section 29 applies to an action taken on, over or under the seabed vested in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980* in the same way that it applies to an action taken in the Territory.

(3) Section 29 applies to an action taken in a Commonwealth marine area to which a law of a State or self-governing Territory is applied by a Commonwealth law or by an agreement or arrangement under a Commonwealth law (other than this Act) in the same way as it applies to an action in the State or Territory, if the provision of the bilateral agreement has effect in relation to the area.

Note: A provision of a bilateral agreement only has effect in relation to a Commonwealth area or the Great Barrier Reef Marine Park if the agreement expressly provides that it does. See section 49.

31 Extended operation in non-self-governing Territories

A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

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(a) the action is taken in a Territory (the ***action Territory***) that is not a self-governing Territory; and

(b) an Act providing for the government of the action Territory provides that some or all of the law of a State or self-governing Territory is in force in the action Territory as a law of the Territory; and

(c) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or self-governing Territory not to require approval under Part 9 for the purposes of the provision of Part 3 (because the action is approved or taken in accordance with a bilaterally accredited management arrangement or a bilaterally accredited authorisation process); and

(d) the bilateral agreement specifies that the provision of the agreement making the declaration has effect in relation to actions in the action Territory; and

(e) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and

(f) either of the following applies:

(i) in the case of a bilaterally accredited management arrangement—the management arrangement is in force under a law of the State or self-governing Territory identified in or under the bilateral agreement;

(ii) in the case of a bilaterally accredited authorisation process—the authorisation process is set out in a law of the State or self-governing Territory, and the law and the authorisation process are identified in or under the bilateral agreement; and

(g) the action is taken in accordance with the bilaterally accredited management arrangement or bilaterally accredited authorisation process.

Note: Division 3 of Part 5 explains how the operation of a bilateral agreement may be ended or suspended.

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Division 2—Actions covered by Ministerial declarations and accredited management arrangements or accredited authorisation processes

Subdivision A—Effect of declarations

32 Actions declared by Minister not to need approval

A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

(a) the action is one of a class of actions declared by the Minister under section 33 not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with an accredited management arrangement or an accredited authorisation process for the purposes of the declaration); and

(b) the declaration is in operation when the action is taken; and

(c) one of the following applies:

(i) in the case of an accredited management arrangement—the management arrangement is in operation under a law of the Commonwealth identified in or under the declaration;

(ii) in the case of an accredited authorisation process—the authorisation process is set out in a law of the Commonwealth, and the law and the authorisation process are identified in or under the declaration; and

(d) the action is taken in accordance with the accredited management arrangement or accredited authorisation process.

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Subdivision B—Making declarations

33 Making declaration that actions do not need approval under Part 9

Declaration of actions not needing approval

(1) The Minister may declare in writing that actions in a class of actions specified in the declaration wholly or partly by reference to the fact that their taking has been approved by the Commonwealth or a specified Commonwealth agency, in accordance with a management arrangement or authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration, do not require approval under Part 9 for the purposes of a specified provision of Part 3.

Note 1: Subdivisions C and D set out rules about prerequisites for making a declaration and limits on making a declaration.

Note 2: Section 35 provides for revocation of a declaration.

*What is an **accredited management arrangement**?*

(2) A management arrangement is an ***accredited management arrangement*** for the purposes of a declaration that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if:

(a) the management arrangement is in operation under a law of the Commonwealth identified in or under the declaration; and

(b) the management arrangement has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

*What is an **accredited authorisation process**?*

(2A) An authorisation process is an ***accredited authorisation process*** for the purposes of a declaration that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if:

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(a) the authorisation process is set out in a law of the Commonwealth, and the law and the authorisation process are identified in or under the declaration; and

(b) the authorisation process has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

Accrediting management arrangement or authorisation process

(3) For the purposes of subsection (2) or (2A), the Minister may accredit by written instrument a management arrangement or authorisation process for the purposes of a declaration. However, the Minister may do so only if the Minister is satisfied that:

(a) the management arrangement or authorisation process and the law under which it is in operation, or in which it is set out, meet the criteria prescribed by the regulations; and

(b) there has been or will be adequate assessment of the impacts that actions approved in accordance with the management arrangement or authorisation process:

(i) have or will have; or

(ii) are likely to have;

on each matter protected by a provision of Part 3 to which the declaration relates; and

(c) actions approved or taken in accordance with the management arrangement or authorisation process will not have unacceptable or unsustainable impacts on a matter protected by a provision of Part 3 to which the declaration relates.

The Minister must publish in accordance with the regulations (if any) the instrument accrediting the management arrangement or authorisation process.

Note: Subdivision C sets out more prerequisites for accrediting a management arrangement or authorisation process.

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Tabling of management arrangement or authorisation process before accreditation

(4) The Minister must cause to be laid before each House of the Parliament:

(a) a copy of:

(i) in the case of a management arrangement—the management arrangement; or

(ii) in the case of an authorisation process—the relevant part of the law in which the authorisation process is set out;

that the Minister is considering accrediting for the purposes of subsection (2) or (2A); and

(b) a notice that the Minister proposes to accredit the management arrangement or authorisation process for the purposes of a declaration under this section.

Limitations on accreditation during period for opposition

(5) The Minister must not accredit a management arrangement or authorisation process for the purposes of subsection (2) or (2A) under a bilateral agreement:

(a) before, or within 15 sitting days after, a copy of the management arrangement or authorisation process is laid before each House of the Parliament under this section; or

(b) if, within those 15 sitting days of a House, notice of a motion to oppose accreditation of the management arrangement or authorisation process is given in that House—subject to subsection (5A), within 15 sitting days of that House after the notice is given.

(5A) If:

(a) notice of a motion to oppose accreditation of the management arrangement or authorisation process is given in a House of the Parliament within 15 sitting days after the management arrangement or authorisation process is laid before the House under this section; and

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(b) the notice is withdrawn or otherwise disposed of within 15 sitting days of that House after the notice is given;

then, subject to paragraph (5)(a), the Minister may accredit the management arrangement or authorisation process after the motion is withdrawn or otherwise disposed of.

No accreditation after accreditation opposed

(6) The Minister must not accredit the management arrangement or authorisation process if either House of the Parliament passes a resolution opposing accreditation of the management arrangement or authorisation process following a motion of which notice has been given within 15 sitting days after the management arrangement or relevant part of the law has been laid before the House under this section.

No accreditation if motion not defeated in time

(7) The Minister must not accredit the management arrangement or authorisation process if, at the end of 15 sitting days after notice of a motion to oppose accreditation of the management arrangement or authorisation process that was given in a House of the Parliament within 15 sitting days after the management arrangement or relevant part of the law was laid before the House under this section:

(a) the notice has not been withdrawn and the motion has not been called on; or

(b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of.

Extended time after dissolution or prorogation

(8) If:

(a) notice of a motion to oppose the accreditation of the management arrangement or authorisation process is given in a House of the Parliament (the ***opposing House***); and

(b) before the end of 15 sitting days of the opposing House after the notice is given:

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(i) the House of Representatives is dissolved or expires; or

(ii) the Parliament is prorogued; and

(c) at the time of the dissolution, expiry or prorogation (as appropriate):

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

the management arrangement or relevant part of the law is taken for the purposes of subsections (5), (5A), (6) and (7) to have been laid before the opposing House on the first sitting day of that House after the dissolution, expiry or prorogation (as appropriate).

34 What is *matter protected* by a provision of Part 3?

The ***matter protected*** by a provision of Part 3 specified in column 2 of an item of the following table is the thing specified in column 3 of the item.

Matter protected by provisions of Part 3

Item	Provision	Matter protected
1	section 12	the world heritage values of a declared World Heritage property
1A	section 15A	the world heritage values of a declared World Heritage property
1B	section 15B	the National Heritage values of a National Heritage place
1C	section 15C	the National Heritage values of a National Heritage place
2	section 16	the ecological character of a declared Ramsar wetland
2A	section 17B	the ecological character of a declared Ramsar wetland
3	subsection 18(1)	a listed threatened species in the extinct in the wild category

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Section 34

Matter protected by provisions of Part 3		
Item	**Provision**	**Matter protected**
4	subsection 18(2)	a listed threatened species in the critically endangered category
5	subsection 18(3)	a listed threatened species in the endangered category
6	subsection 18(4)	a listed threatened species in the vulnerable category
7	subsection 18(5)	a listed threatened ecological community in the critically endangered category
8	subsection 18(6)	a listed threatened ecological community in the endangered category
8A	subsection 18A(1) or (2)	a listed threatened species (except a species included in the extinct category of the list referred to in section 178 or a conservation dependent species) and a listed threatened ecological community (except an ecological community included in the vulnerable category of the list referred to in section 181)
9	section 20	a listed migratory species
9A	section 20A	a listed migratory species
10	section 21	the environment
10A	section 22A	the environment
11	subsection 23(1)	the environment
12	subsection 23(2)	the environment in a Commonwealth marine area
13	subsection 23(3)	the environment in the coastal waters (as defined in the *Fisheries Management Act 1991*) in which the action is taken of the State or Territory

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Matter protected by provisions of Part 3		
Item	**Provision**	**Matter protected**
13A	subsection 24A(1) or (2)	the environment
13B	subsection 24A(3) or (4)	the environment in a Commonwealth marine area
13C	subsection 24A(5) or (6)	the environment in the coastal waters (as defined in the *Fisheries Management Act 1991*) in which the action is taken of the State or Territory
13D	subsection 24B(1)	the environment
13E	subsection 24B(2)	the environment in the Great Barrier Reef Marine Park
13F	subsections 24C(1) and (3)	the environment
13G	subsections 24C(5) and (7)	the environment in the Great Barrier Reef Marine Park
13H	section 24D	a water resource
13J	section 24E	a water resource
14	section 25	a thing prescribed by the regulations for the purposes of this item in relation to an action to which section 25 applies
15	subsection 26(1)	the environment
16	subsection 26(2)	the environment on Commonwealth land
16A	subsection 27A(1) or (2)	the environment
16B	subsection 27A(3) or (4)	the environment on Commonwealth land
16C	section 27B	the environment in a Commonwealth Heritage place outside the Australian jurisdiction

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Matter protected by provisions of Part 3		
Item	**Provision**	**Matter protected**
16D	subsections 27C(1) and (2)	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
17	section 28	the environment

Subdivision C—Prerequisites for making declarations

34A Minister may only make declaration if prescribed criteria are met

The Minister may make a declaration under section 33 only if the Minister is satisfied that the declaration:

(a) accords with the objects of this Act; and

(b) meets the requirements (if any) prescribed by the regulations.

34B Declarations relating to declared World Heritage properties

(1) The Minister may make a declaration under section 33 relating to a declared World Heritage property only if:

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the World Heritage Convention; and

(b) the Minister is satisfied that the declaration will promote the management of the property in accordance with the Australian World Heritage management principles; and

(c) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a declared World Heritage property only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the World Heritage Convention; and

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(b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the property in accordance with the Australian World Heritage management principles.

34BA Declarations relating to National Heritage places

(1) The Minister may make a declaration under section 33 relating to a National Heritage place only if:

(a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the National Heritage management principles; and

(b) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of such a declaration only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the National Heritage management principles.

34C Declarations relating to declared Ramsar wetlands

(1) The Minister may make a declaration under section 33 relating to a declared Ramsar wetland only if:

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the Ramsar Convention; and

(b) the Minister is satisfied that the declaration will promote the management of the wetland in accordance with the Australian Ramsar management principles; and

(c) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a declared Ramsar wetland only if:

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(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the Ramsar Convention; and

(b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the wetland in accordance with the Australian Ramsar management principles.

34D Declarations relating to listed threatened species and ecological communities

(1) The Minister may make a declaration under section 33 relating to a listed threatened species or a listed threatened ecological community only if:

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES; and

(b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species or community to which the declaration relates; and

(c) the Minister is satisfied that the declaration is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and

(ca) the Minister has had regard to any approved conservation advice for the species or community; and

(d) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a listed threatened species or a listed threatened ecological community only if:

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(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under:
  (i) the Biodiversity Convention; or
  (ii) the Apia Convention; or
  (iii) CITES; and
(b) the Minister is satisfied that the management arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species or community to which the declaration relates; and
(c) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
(d) the Minister has had regard to any approved conservation advice for the species or community.

34E Declarations relating to migratory species

(1) The Minister may make a declaration under section 33 relating to a listed migratory species only if:
  (a) the Minister is satisfied that the declaration is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:
    (i) the Bonn Convention;
    (ii) CAMBA;
    (iii) JAMBA;
    (iv) an international agreement approved under subsection 209(4); and
  (b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species to which the declaration relates; and
  (c) the declaration meets the requirements (if any) prescribed by the regulations.

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(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a listed migratory species only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:

(i) the Bonn Convention;

(ii) CAMBA;

(iii) JAMBA;

(iv) an international agreement approved under subsection 209(4); and

(b) the Minister is satisfied that the management arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species to which the declaration relates.

34F Declarations relating to Commonwealth Heritage places

(1) The Minister may make a declaration under section 33 relating to a Commonwealth Heritage place only if:

(a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the Commonwealth Heritage management principles; and

(b) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of such a declaration only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the Commonwealth Heritage management principles.

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Subdivision D—Other rules about declarations

35 Revoking declarations

Revoking declarations

(1) The Minister may, by written instrument, revoke a declaration made under section 33.

Revocation does not affect some actions

(2) If:
  (a) a declaration made under section 33 is revoked; and
  (b) before the revocation, an action was being taken that could be taken without approval under Part 9 because its taking was covered by the declaration; and
  (c) the action had not been completed before the revocation;

this Act continues to operate in relation to the action as if the declaration had not been revoked.

36 Other rules about declarations

Minister must not give preference

(1) In making a declaration or accrediting a management arrangement or authorisation process under section 33, or revoking a declaration under section 35, relating to an action taken:
  (a) by a person for the purposes of trade between Australia and another country or between 2 States; or
  (b) by a constitutional corporation;

the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

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Publishing declarations

(2) The Minister must publish a declaration made under section 33, an instrument accrediting a management arrangement or authorisation process under section 33, or an instrument under section 35 revoking a declaration, in accordance with the regulations.

36A Minor amendments of accredited management arrangement or accredited authorisation process

(1) If:

(a) a management arrangement or an authorisation process is an accredited management arrangement or an accredited authorisation process; and

(b) the management arrangement or authorisation process is amended, or is proposed to be amended; and

(c) the Minister is satisfied that the amendments are, or will be, minor; and

(d) the Minister is satisfied that the management arrangement or authorisation process as amended meets, or will meet, the requirements of:

(i) paragraphs 33(3)(a), (b) and (c); and

(ii) section 34A; and

(iii) subsection 34B(2), 34BA(2), 34C(2), 34D(2), 34E(2) or 34F(2) (as the case requires);

the Minister may, by instrument in writing, determine that this section applies to the amendments.

(2) If the Minister makes a determination under subsection (1):

(a) the management arrangement or authorisation process as amended is, for the purposes of this Act, taken to be an accredited management arrangement or accredited authorisation process; and

(b) subsections 33(1) to (8) do not apply in relation to the amendments to the management arrangement or authorisation process, or the management arrangement or authorisation process as amended; and

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(c) actions taken after the determination is made in accordance with the accredited management arrangement or accredited authorisation process as amended do not require approval under Part 9 for the purposes of a specified provision of Part 3.

(3) The Minister must publish a determination under subsection (1) in accordance with the regulations (if any).

(4) A determination under subsection (1) is not a legislative instrument.

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Division 3—Actions covered by Ministerial declarations and bioregional plans

Subdivision A—Effect of declarations

37 Actions declared by Minister not to need approval

A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

(a) the action is an action, or one of a class of actions, declared by the Minister under section 37A not to require approval under Part 9 for the purposes of the provision (because the taking of the action is in accordance with a particular bioregional plan); and

(b) the declaration is in operation when the action is taken; and

(c) the action is taken:

(i) in the bioregion to which the plan applies; and

(ii) in accordance with the plan.

Note: Division 2 of Part 12 deals with bioregional plans.

Subdivision B—Making declarations

37A Making declarations that actions do not need approval under Part 9

Subject to Subdivisions C and D, the Minister may, by legislative instrument, declare that an action or class of actions specified in the declaration, wholly or partly by reference to the fact that the taking of the action or class of actions is in accordance with a bioregional plan, do not require approval under Part 9 for the purposes of a specified provision of Part 3.

Note 1: Subdivisions C and D set out rules about prerequisites for making a declaration and limits on making a declaration.

Note 2: Section 37K provides for revocation of a declaration.

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Subdivision C—Prerequisites for making declarations

37B General considerations

(1) In deciding whether to make a declaration under section 37A, the Minister must consider the following, so far as they are not inconsistent with any other requirements of this Subdivision:

(a) matters relevant to any matter protected by a provision of Part 3 that the Minister considers is relevant to the action or class of actions to which the declaration relates;

(b) economic and social matters.

(2) In considering those matters, the Minister must take into account the principles of ecologically sustainable development.

(3) The Minister must not make a declaration under section 37A in relation to an action or class of actions and a provision of Part 3 if the Minister considers that the action, or an action in the class, if taken, would have unacceptable or unsustainable impacts on a matter protected by the provision.

37C Minister may make declaration only if prescribed criteria are met

The Minister may make a declaration under section 37A only if the Minister is satisfied that the declaration:

(a) accords with the objects of this Act; and

(b) meets the requirements (if any) prescribed by the regulations.

37D Declarations relating to declared World Heritage properties

The Minister may make a declaration under section 37A relating to a declared World Heritage property only if:

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the World Heritage Convention; and

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(b) the Minister is satisfied that the declaration will promote the management of the property in accordance with the Australian World Heritage management principles; and

(c) the Minister is satisfied that the declaration is not inconsistent with a plan that has been prepared for the management of the declared World Heritage property under section 316 or as described in section 321.

37E Declarations relating to National Heritage places

The Minister may make a declaration under section 37A relating to a National Heritage place only if:

(a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the National Heritage management principles; and

(b) the Minister is satisfied that the declaration is not inconsistent with:

(i) an agreement to which the Commonwealth is a party in relation to the National Heritage place; or

(ii) a plan that has been prepared for the management of the National Heritage place under section 324S or as described in section 324X.

37F Declarations relating to declared Ramsar wetlands

The Minister may make a declaration under section 37A relating to a declared Ramsar wetland only if:

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the Ramsar Convention; and

(b) the Minister is satisfied that the declaration will promote the management of the wetland in accordance with the Australian Ramsar management principles.

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37G Declarations relating to listed threatened species and ecological communities

The Minister may make a declaration under section 37A relating to a listed threatened species or a listed threatened ecological community only if:

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under:
  (i) the Biodiversity Convention; or
  (ii) the Apia Convention; or
  (iii) CITES; and

(b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species or community to which the declaration relates; and

(c) the Minister is satisfied that the declaration is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and

(d) the Minister has had regard to any approved conservation advice for the species or community.

37H Declarations relating to listed migratory species

The Minister may make a declaration under section 37A relating to a listed migratory species only if:

(a) the Minister is satisfied that the declaration is not inconsistent with whichever of the following conventions or agreements because of which the species is listed:
  (i) the Bonn Convention;
  (ii) CAMBA;
  (iii) JAMBA;
  (iv) an international agreement approved under subsection 209(4); and

(b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species to which the declaration relates.

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37J No declarations relating to nuclear actions

(1) The Minister must not make a declaration relating to an action consisting of, or involving the construction or operation of, any of the following nuclear installations:

(a) a nuclear fuel fabrication plant;

(b) a nuclear power plant;

(c) an enrichment plant;

(d) a reprocessing facility.

(2) Paragraph (1)(b) does not apply to a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.

Subdivision D—Other rules about declarations

37K Revoking declarations

Revoking declarations

(1) The Minister may, by legislative instrument, revoke a declaration made under section 37A.

Revocation does not affect some actions

(2) If:

(a) a declaration made under section 37A is revoked; and

(b) before the revocation, an action was being taken that could be taken without approval under Part 9 because its taking was covered by the declaration; and

(c) the action had not been completed before the revocation;

this Act continues to operate in relation to the action as if the declaration had not been revoked.

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37L Other rules about declarations

Minister must not give preference

(1) In making a declaration under section 37A, or revoking a declaration under section 37K, relating to an action taken:

(a) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or

(b) by a constitutional corporation;

the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Publishing declarations

(2) Within 10 business days after the Minister makes a declaration under section 37A, or an instrument under section 37K revoking a declaration, the Minister must publish the declaration or instrument in accordance with the regulations.

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Division 3A—Actions covered by conservation agreements

37M Actions declared by conservation agreement not to need approval

A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

(a) the action is included in a class of actions declared in a conservation agreement, in accordance with section 306A, not to require approval under Part 9 for the purposes of the provision; and

(b) the conservation agreement is in operation when the action is taken; and

(c) the action is taken in accordance with the conditions (if any) specified in the declaration.

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Division 4—Forestry operations in certain regions

Subdivision A—Regions covered by regional forest agreements

38 Part 3 not to apply to certain RFA forestry operations

(1) Part 3 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.

(2) In this Division:

RFA or ***regional forest agreement*** has the same meaning as in the *Regional Forest Agreements Act 2002*.

RFA forestry operation has the same meaning as in the *Regional Forest Agreements Act 2002*.

Note: This section does not apply to some RFA forestry operations. See section 42.

Subdivision B—Regions subject to a process of negotiating a regional forest agreement

39 Object of this Subdivision

The purpose of this Subdivision is to ensure that an approval under Part 9 is not required for forestry operations in a region for which a process (involving the conduct of a comprehensive regional assessment, assessment under the *Environment Protection (Impact of Proposals) Act 1974* and protection of the environment through agreements between the Commonwealth and the relevant State and conditions on licences for the export of wood chips) of developing and negotiating a regional forest agreement is being, or has been, carried on.

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40 Forestry operations in regions not yet covered by regional forest agreements

(1) A person may undertake forestry operations in an RFA region in a State or Territory without approval under Part 9 for the purposes of a provision of Part 3 if there is not a regional forest agreement in force for any of the region.

Note 1: This section does not apply to some forestry operations. See section 42.

Note 2: The process of making a regional forest agreement is subject to assessment under the *Environment Protection (Impact of Proposals) Act 1974*, as continued by the *Environmental Reform (Consequential Provisions) Act 1999*.

(2) In this Division:

forestry operations means any of the following done for commercial purposes:

(a) the planting of trees;

(b) the managing of trees before they are harvested;

(c) the harvesting of forest products;

and includes any related land clearing, land preparation and regeneration (including burning) and transport operations. For the purposes of paragraph (c), ***forest products*** means live or dead trees, ferns or shrubs, or parts thereof.

RFA region has the meaning given by section 41.

(3) Subsection (1) does not operate in relation to an RFA region that is the subject of a declaration in force under this section.

(4) The Minister may, by legislative instrument, declare that subsection (1) does not apply to an RFA region.

(6) The Minister must not make a declaration that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:

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(a) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
(b) by a constitutional corporation.

41 What is an *RFA region*?

Regions that are RFA regions

(1) Each of the following is an ***RFA region***:
(a) the area delineated as the Eden RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
(b) the area delineated as the Lower North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
(c) the area delineated as the Upper North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
(d) the area delineated as the South Region on the map of the Comprehensive Regional Assessment South CRA Region dated August 1997 and published by the State Forests GIS Branch of the organisation known as State Forests of New South Wales;
(e) the area delineated as the Gippsland Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
(f) the area delineated as the North East RFA Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
(g) the area delineated as the West Region in the map of that Region dated 3 March 1999 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;

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(h) the area delineated as the South East Queensland RFA Region on the map of that Region dated 21 August 1998 and published by the Bureau of Resource Sciences.

Regulations may amend list of regions

(2) The regulations may amend subsection (1).

Prerequisites for prescribing RFA regions

(3) Before the Governor-General makes regulations amending subsection (1), the Minister must be satisfied that the proposed regulations, in conjunction with this Subdivision, will not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Subdivision C—Limits on application

42 This Division does not apply to some forestry operations

Subdivisions A and B of this Division, and subsection 6(4) of the *Regional Forest Agreements Act 2002*, do not apply to RFA forestry operations, or to forestry operations, that are:

(a) in a property included in the World Heritage List; or

(b) in a wetland included in the List of Wetlands of International Importance kept under the Ramsar Convention; or

(c) incidental to another action whose primary purpose does not relate to forestry.

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Division 5—Actions in the Great Barrier Reef Marine Park

43 Actions taken in accordance with zoning plan

A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

(a) the action is taken in a zone (within the meaning of the *Great Barrier Reef Marine Park Act 1975*) of the Great Barrier Reef Marine Park; and

(b) it is for a purpose for which, under the zoning plan for the zone made under the *Great Barrier Reef Marine Park Act 1975*, the zone may be used or entered without permission.

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Division 6—Actions with prior authorisation

43A Actions with prior authorisation

(1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

(a) the action consists of a use of land, sea or seabed; and

(b) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and

(c) immediately before the commencement of this Act, no further specific environmental authorisation was necessary to allow the action to be taken lawfully; and

(d) at the time the action is taken, the specific environmental authorisation continues to be in force.

(1A) For the purposes of paragraphs (1)(c) and (d), a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation unless:

(a) the action that is authorised by the authorisation following the renewal or extension is the same as the action that was authorised by the authorisation before the commencement of this Act; and

(b) the renewal or extension could properly be made or given without any further consideration of the environmental impacts of the action.

Note: If a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation, the condition in paragraph (1)(c) or (d) would not be met.

(2) In this Act:

environmental authorisation means an authorisation under a law of the Commonwealth, a State or a self-governing Territory that has either or both of the following objects (whether express or implied):

(a) to protect the environment;

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(b) to promote the conservation and ecologically sustainable use of natural resources.

specific environmental authorisation means an environmental authorisation that:

(a) identifies the particular action by reference to acts and matters uniquely associated with that action; or

(b) was issued or granted following a consideration of the particular action by reference to acts and matters uniquely associated with that action.

43B Actions which are lawful continuations of use of land etc.

(1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if the action is a lawful continuation of a use of land, sea or seabed that was occurring immediately before the commencement of this Act.

(2) However, subsection (1) does not apply to an action if:

(a) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and

(b) at the time the action is taken, the specific environmental authorisation continues to be in force.

Note: In that case, section 43A applies instead.

(3) For the purposes of this section, neither of the following is a ***continuation*** of a use of land, sea or seabed:

(a) an enlargement, expansion or intensification of use;

(b) either:

(i) any change in the location of where the use of the land, sea or seabed is occurring; or

(ii) any change in the nature of the activities comprising the use;

that results in a substantial increase in the impact of the use on the land, sea or seabed.

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Chapter 3—Bilateral agreements

Part 5—Bilateral agreements

Division 1—Object of Part

44 Object of this Part

The object of this Part is to provide for agreements between the Commonwealth and a State or self-governing Territory that:

(a) protect the environment; and

(b) promote the conservation and ecologically sustainable use of natural resources; and

(c) ensure an efficient, timely and effective process for environmental assessment and approval of actions; and

(d) minimise duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (and vice versa).

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Division 2—Making bilateral agreements

Subdivision A—Power to make bilateral agreements

45 Minister may make agreement

Making bilateral agreement

(1) On behalf of the Commonwealth, the Minister may enter into a bilateral agreement.

Note 1: A bilateral agreement can detail the level of Commonwealth accreditation of State practices, procedures, processes, systems, management plans and other approaches to environmental protection.

Note 2: Subdivision B sets out some prerequisites for entering into bilateral agreements.

*What is a **bilateral agreement**?*

(2) A ***bilateral agreement*** is a written agreement between the Commonwealth and a State or a self-governing Territory that:

(a) provides for one or more of the following:

(i) protecting the environment;

(ii) promoting the conservation and ecologically sustainable use of natural resources;

(iii) ensuring an efficient, timely and effective process for environmental assessment and approval of actions;

(iv) minimising duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (or vice versa); and

(b) is expressed to be a bilateral agreement.

Publishing notice of intention to enter into agreement

(3) As soon as practicable after starting the process of developing a draft bilateral agreement with a State or self-governing Territory, the Minister must publish, in accordance with the regulations (if

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any), notice of his or her intention to develop a draft bilateral agreement with the State or Territory.

Publishing bilateral agreements and related material

(4) As soon as practicable after entering into a bilateral agreement, the Minister must publish in accordance with the regulations:
  (a) the agreement; and
  (b) a statement of the Minister's reasons for entering into the agreement; and
  (c) a report on the comments (if any) received on the draft of the agreement published under Subdivision B.

46 Agreement may declare actions do not need approval under Part 9

Declaration of actions not needing approval

(1) A bilateral agreement may declare that actions in a class of actions specified in the agreement wholly or partly by reference to the fact that their taking has been approved by:
  (a) the State or self-governing Territory that is party to the agreement; or
  (b) an agency of the State or Territory;

in accordance with a management arrangement or authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement do not require approval under Part 9 for the purposes of a specified provision of Part 3, other than section 24D or 24E.

*What is a **bilaterally accredited management arrangement**?*

(2) A management arrangement is a ***bilaterally accredited management arrangement*** for the purposes of a bilateral agreement declaring that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3, other than section 24D or 24E, if and only if:

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(a) the management arrangement is in force under a law of the State or Territory that is a party to the agreement and the law is identified in or under the agreement; and

(b) the management arrangement has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

*What is a **bilaterally accredited authorisation process**?*

(2A) An authorisation process is a ***bilaterally accredited authorisation process*** for the purposes of a bilateral agreement declaring that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3, other than section 24D or 24E, if and only if:

(a) the authorisation process is set out in a law of the State or Territory that is a party to the agreement, and the law and the process are identified in or under the agreement; and

(b) the authorisation process has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

Accrediting management arrangement or authorisation process

(3) For the purposes of subsection (2) or (2A), the Minister may accredit in writing a management arrangement or an authorisation process for the purposes of a bilateral agreement with a State or self-governing Territory. However, the Minister may do so only if the Minister is satisfied that:

(a) the management arrangement or authorisation process and the law under which it is in force, or in which it is set out, meet the criteria prescribed by the regulations; and

(b) there has been or will be adequate assessment of the impacts that actions approved in accordance with the management arrangement or authorisation process:

(i) have or will have; or

(ii) are likely to have;

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on each matter protected by a provision of Part 3 in relation to which the agreement makes a declaration under subsection (1); and

(c) actions approved in accordance with the management arrangement or authorisation process will not have unacceptable or unsustainable impacts on a matter protected by a provision of Part 3 in relation to which the agreement makes a declaration under subsection (1).

The Minister must publish in accordance with the regulations (if any) the instrument accrediting the management arrangement or authorisation process.

Note: Subdivision B sets out more prerequisites for accrediting a management arrangement or an authorisation process.

Tabling of management arrangement or authorisation process before accreditation

(4) The Minister must cause to be laid before each House of the Parliament a copy of:

(a) in the case of a management arrangement—the management arrangement; or

(b) in the case of an authorisation process—the relevant part of the law in which the authorisation process is set out;

that the Minister is considering accrediting for the purposes of subsection (2) or (2A).

Limitations on accreditation during period for disallowance

(5) The Minister must not accredit a management arrangement or authorisation process for the purposes of subsection (2) or (2A) under a bilateral agreement:

(a) before, or within 15 sitting days after, a copy of the management arrangement or authorisation process is laid before each House of the Parliament; or

(b) if, within those 15 sitting days of a House, notice of a motion to disallow the management arrangement or authorisation

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process is given in that House—subject to subsection (5A), within 15 sitting days of that House after the notice is given.

(5A) If:

(a) notice of a motion to disallow accreditation of the management arrangement or authorisation process is given in a House of the Parliament within 15 sitting days after the management arrangement or authorisation process is laid before the House under this section; and

(b) the notice is withdrawn or otherwise disposed of within 15 sitting days of that House after the notice is given;

then, subject to paragraph (5)(a), the Minister may accredit the management arrangement or authorisation process after the motion is withdrawn or otherwise disposed of.

Disallowance motion passed

(6) The Minister must not accredit the management arrangement or authorisation process if either House of the Parliament passes a resolution disallowing the accreditation of the management arrangement or authorisation process following a motion of which notice has been given within 15 sitting days after the management arrangement or relevant part of the law has been laid before the House.

Disallowance motion not defeated in time

(7) The Minister must not accredit the management arrangement or authorisation process if, at the end of 15 sitting days after notice of a motion to disallow the management arrangement or authorisation process that was given in a House of the Parliament within 15 sitting days after the management arrangement or relevant part of the law was laid before the House:

(a) the notice has not been withdrawn and the motion has not been called on; or

(b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of.

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Extended time after dissolution or prorogation

(8) If:

(a) notice of a motion to disallow the management arrangement or authorisation process is given in a House of the Parliament (the ***disallowing House***); and

(b) before the end of 15 sitting days of the disallowing House after the notice is given:

(i) the House of Representatives is dissolved or expires; or

(ii) the Parliament is prorogued; and

(c) at the time of the dissolution, expiry or prorogation (as appropriate):

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

the management arrangement or relevant part of the law is taken for the purposes of subsections (5), (5A), (6) and (7) to have been laid before the disallowing House on the first sitting day of that House after the dissolution, expiry or prorogation (as appropriate).

No preference

(9) In accrediting a management arrangement or authorisation process for the purposes of a bilateral agreement making a declaration relating to an action:

(a) by a person for the purposes of trade between Australia and another country or between 2 States; or

(b) by a constitutional corporation;

the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Requirements for bilateral agreement making declaration

(10) If the declaration is for actions approved in accordance with a bilaterally accredited management arrangement, the declaration

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does not have effect for the purposes of this Act unless the bilateral agreement requires the State or self-governing Territory that is party to the agreement and agencies of the State or Territory:

(a) to act in accordance with the management arrangement; and

(b) not to approve the taking of actions that would be inconsistent with the management arrangement.

47 Agreement may declare classes of actions do not need assessment

Declaration of actions that do not need further assessment

(1) A bilateral agreement may declare that actions in a class of actions identified wholly or partly by reference to the fact that they have been assessed in a specified manner need not be assessed under Part 8.

Note: A declaration described in subsection (1) can accredit practices, procedures, systems of the State or self-governing Territory for environmental assessment.

Prerequisite to declaration

(2) The Minister may enter into a bilateral agreement declaring that actions assessed in a specified manner need not be assessed under Part 8 only if he or she is satisfied that assessment of an action in the specified manner will include assessment of the impacts the action:

(a) has or will have; or

(b) is likely to have;

on each matter protected by a provision of Part 3.

Assessment approaches that may be accredited

(3) The manner of assessment of actions that may be specified in a bilateral agreement between the Commonwealth and a State or Territory for the purposes of subsection (1) includes:

(a) assessment by any person under a law of the State or Territory; and

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(b) assessment by any person under an agreement or other instrument made under a law of the State or Territory; and

(c) assessment by any person in accordance with criteria specified in an instrument agreed by the parties to the bilateral agreement.

This does not limit subsection (1).

Report on actions that do not need further assessment

(4) If a bilateral agreement has (or could have) the effect that an action need not be assessed under Part 8 but the action must still be approved under Part 9, the agreement must provide for the Minister to receive a report including, or accompanied by, enough information about the relevant impacts of the action to let the Minister make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

48 Other provisions of bilateral agreements

(1) A bilateral agreement may include:

(a) provisions for State accreditation of Commonwealth processes and decisions; and

(b) other provisions for achieving the object of this Part; and

(c) provisions for the provision of information by one party to the agreement to the other party; and

(d) provisions for the publication of information relating to the agreement; and

(e) provisions relating to the operation of the whole agreement or particular provisions of the agreement, such as:

(i) provisions for the commencement of all or part of the agreement; or

(ii) provisions for auditing, monitoring and reporting on the operation and effectiveness of all or part of the agreement; or

(iii) provisions for review of all or part of the agreement; or

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(iv) provisions for rescission of all or part of the agreement; or

(v) provisions for expiry of the agreement; and

(f) provisions varying or revoking another bilateral agreement between the same parties; and

(g) a provision dealing with a matter that another section of this Act permits a bilateral agreement to deal with.

Consistency with Act and regulations

(2) A provision of a bilateral agreement has no effect for the purposes of this Act to the extent that it is inconsistent with this Act or the regulations. A provision of a bilateral agreement is not inconsistent with this Act or the regulations if it is possible to comply with both the provision on the one hand and the Act or regulations on the other hand.

Relationship with sections 46 and 47

(3) Subsection (1) does not limit sections 46 and 47.

48A Mandatory provisions

Application

(1) A bilateral agreement with a State or self-governing Territory including a declaration that is described in section 46 or 47 and covers actions described in subsection (2) or (3) does not have effect for the purposes of this Act unless the agreement also includes the undertaking required by subsection (2) or (3) (as appropriate).

Agreements including declarations about approvals

(2) A bilateral agreement including a declaration described in section 46 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have on a thing that is not a matter protected by a provision of Part 3 for

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which the declaration has effect will be assessed to the greatest extent practicable:

(a) actions taken in the State or Territory by a constitutional corporation;

(b) actions taken in the State or Territory by a person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories;

(c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;

(d) actions taken in the Territory (if applicable).

Agreements including declarations about assessment

(3) A bilateral agreement including a declaration described in section 47 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have (other than the relevant impacts of those actions) will be assessed to the greatest extent practicable:

(a) actions taken in the State or Territory by a constitutional corporation;

(b) actions taken in the State or Territory by a person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories;

(c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;

(d) actions taken in the Territory (if applicable).

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Auditing

(4) A bilateral agreement does not have effect for the purposes of this Act unless it includes a provision recognising that, under the *Auditor-General Act 1997*, the Auditor-General may audit the operations of the Commonwealth public sector (as defined in section 18 of that Act) relating to the bilateral agreement.

49 Certain limits on scope of bilateral agreements

(1) A provision of a bilateral agreement does not have any effect in relation to an action in a Commonwealth area or an action by the Commonwealth or a Commonwealth agency, unless the agreement expressly provides otherwise.

(1A) A provision of a bilateral agreement does not have any effect in relation to an action in the Great Barrier Reef Marine Park, unless the agreement expressly provides otherwise.

(2) A provision of a bilateral agreement does not have any effect in relation to an action in Booderee National Park, Kakadu National Park or Uluṟu-Kata Tjuṯa National Park.

(3) ***Booderee National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Booderee National Park was given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

Subdivision B—Prerequisites for making bilateral agreements

49A Consultation on draft agreement

The Minister may enter into a bilateral agreement only if he or she:

(a) has published in accordance with the regulations:

(i) a draft of the agreement; and

(ii) an invitation for any person to give the Minister comments on the draft within a specified period of at least 28 days after the latest day on which the draft or invitation was published; and

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(b) has taken into account the comments (if any) received in response to the invitation; and

(c) has considered the role and interests of indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources in the context of the proposed agreement, taking into account Australia's relevant obligations under the Biodiversity Convention.

50 Minister may only enter into agreement if prescribed criteria are met

The Minister may enter into a bilateral agreement only if the Minister is satisfied that the agreement:

(a) accords with the objects of this Act; and

(b) meets the requirements (if any) prescribed by the regulations.

51 Agreements relating to declared World Heritage properties

(1) The Minister may enter into a bilateral agreement containing a provision relating to a declared World Heritage property only if:

(a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the World Heritage Convention; and

(b) the Minister is satisfied that the agreement will promote the management of the property in accordance with the Australian World Heritage management principles; and

(c) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a bilateral agreement containing a provision relating to a declared World Heritage property only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the World Heritage Convention; and

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(b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the property in accordance with the Australian World Heritage management principles.

51A Agreements relating to National Heritage places

(1) The Minister may enter into a bilateral agreement containing a provision relating to a National Heritage place only if:

(a) the Minister is satisfied that the agreement will promote the management of the place in accordance with the National Heritage management principles; and

(b) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of such a bilateral agreement only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the National Heritage management principles.

52 Agreements relating to declared Ramsar wetlands

(1) The Minister may enter into a bilateral agreement containing a provision relating to a declared Ramsar wetland only if:

(a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the Ramsar Convention; and

(b) the Minister is satisfied that the agreement will promote the management of the wetland in accordance with the Australian Ramsar management principles; and

(c) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a

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bilateral agreement containing a provision relating to a declared Ramsar wetland only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the Ramsar Convention; and

(b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the wetland in accordance with the Australian Ramsar management principles.

53 Agreements relating to listed threatened species and ecological communities

(1) The Minister may enter into a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:

(a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES; and

(b) the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species or community to which the provision relates; and

(c) the Minister is satisfied that the provision is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and

(ca) the Minister has had regard to any approved conservation advice for the species or community; and

(d) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:

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(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under:
  (i) the Biodiversity Convention; or
  (ii) the Apia Convention; or
  (iii) CITES; and
(b) the Minister is satisfied that the management arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species or community to which the provision relates; and
(c) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
(d) the Minister has had regard to any approved conservation advice for the species or community.

54 Agreements relating to migratory species

(1) The Minister may enter into a bilateral agreement containing a provision relating to a listed migratory species only if:
  (a) the Minister is satisfied that the provision is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:
    (i) the Bonn Convention;
    (ii) CAMBA;
    (iii) JAMBA;
    (iv) an international agreement approved under subsection 209(4); and
  (b) the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species to which the provision relates; and
  (c) the provision meets the requirements (if any) prescribed by the regulations.

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(2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a bilateral agreement containing a provision relating to a listed migratory species only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:

(i) the Bonn Convention;

(ii) CAMBA;

(iii) JAMBA;

(iv) an international agreement approved under subsection 209(4); and

(b) the Minister is satisfied that the management arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species to which the provision relates.

55 Agreements relating to nuclear actions

The Minister must not enter into a bilateral agreement, or accredit for the purposes of a bilateral agreement a management arrangement or an authorisation process, containing a provision that:

(a) relates to a nuclear action; and

(b) has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of a nuclear action:

(i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or

(ii) by a constitutional corporation.

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56 Agreements relating to prescribed actions

The Minister must not enter into a bilateral agreement containing a provision that:

(a) relates to an action prescribed for the purposes of subsection 25(1); and

(b) has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:

(i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or

(ii) by a constitutional corporation.

Subdivision C—Minor amendments of bilateral agreements

56A Ministerial determination of minor amendments to bilateral agreements

(1) This section applies if:

(a) the Minister intends to develop a draft amendment to a bilateral agreement (the ***principal agreement***); and

(b) the Minister is satisfied that the amendment will not have a significant effect on the operation of the principal agreement; and

(c) the Minister makes a determination, in writing, to that effect.

(2) If the Minister makes a determination under paragraph (1)(c):

(a) the following provisions of this Part do not apply in relation to the amendment to the principal agreement:

(i) subsection 45(3);

(ii) paragraphs 45(4)(b) and (c);

(iii) section 49A; and

(b) the Minister must publish the principal agreement, as amended by the amending agreement, at the same time as

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publishing the amending agreement under paragraph 45(4)(a).

(3) A determination made under paragraph (1)(c) is not a legislative instrument.

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Division 3—Suspending and ending the effect of bilateral agreements

Subdivision A—Suspension and cancellation of effect

57 Representations about suspension or cancellation

Representations

(1) A person may refer to the Minister a matter that the person believes involves a contravention of a bilateral agreement.

Minister must decide whether agreement has been contravened

(2) The Minister must:
  (a) decide whether or not the bilateral agreement has been contravened; and
  (b) decide what action he or she should take in relation to any contravention.

Publication of decision and reasons

(3) The Minister must publish in accordance with the regulations each decision he or she makes, and the reasons for it.

Minister need not decide on vexatious referrals

(4) Despite subsection (2), the Minister need not make a decision under that subsection if he or she is satisfied that:
  (a) the referral was vexatious, frivolous, or not supported by sufficient information to make a decision; or
  (b) the matter referred is the same in substance as a matter that has been referred before; or
  (c) if the alleged contravention of the bilateral agreement were a contravention of the Act, the person referring the matter would not be entitled to apply under section 475 for an injunction in relation to the contravention.

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58 Consultation before cancellation or suspension

(1) The Minister (the ***Environment Minister***) must consult the appropriate Minister of a State or Territory that is party to a bilateral agreement if the Environment Minister believes that the State or Territory:

(a) has not complied with the agreement or will not comply with it; or

(b) has not given effect, or will not give effect, to the agreement in a way that:

(i) accords with the objects of this Act and the objects of this Part; and

(ii) promotes the discharge of Australia's obligations under any agreement with one or more other countries relevant to a matter covered by the agreement.

(2) Subsection (1) operates whether the Environment Minister's belief relates to a matter referred to him or her under section 57 or not.

59 Suspension or cancellation

Minister may give notice of suspension or cancellation

(1) If, after the consultation, the Environment Minister is not satisfied that the State or Territory:

(a) has complied with, and will comply with, the agreement; and

(b) has given effect, and will give effect, to the agreement in a way that:

(i) accords with the objects of this Act and the objects of this Part; and

(ii) promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement;

he or she may give the appropriate Minister of the State or Territory a written notice described in subsection (2) or (3).

Example 1: The Minister could give notice if the agreement declared that certain actions affecting the world heritage values of a declared world

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heritage property did not require approval under Part 9 if approved by the State, and the State approved an action that was not consistent with the protection, conservation and presentation of those values.

Example 2: The Minister could give notice if the agreement declared that certain actions affecting the ecological character of a declared Ramsar wetland did not require approval under Part 9 if approved by the State, and the State approved an action that had a significant adverse impact on that character.

Example 3: The Minister could give notice if the agreement declared that certain actions affecting a listed threatened species did not require approval under Part 9 if approved by the State, and the State approved an action that caused the species to become more threatened.

Notice of suspension

(2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is suspended, either generally or in relation to actions in a specified class, for a period:

(a) starting on a specified day at least 10 business days (in the capital city of the State or Territory) after the day on which the notice is given; and

(b) ending on a specified later day or on the occurrence of a specified event.

Notice of cancellation

(3) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is cancelled, either generally or in relation to actions in a specified class, on a specified day at least 10 business days (in the capital city of the State or Territory) after the day on which the notice is given.

Effect suspended or cancelled in accordance with notice

(4) The effect of an agreement or specified provision of an agreement is suspended or cancelled for the purposes of this Act, or of a specified provision of this Act, either generally or in relation to

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actions in a specified class, in accordance with the notice. This subsection has effect subject to sections 61 and 62.

Reasons for giving notice

(5) When giving a notice, the Environment Minister must give the appropriate Minister of the State or Territory a written statement of reasons for the giving of the notice.

Publishing notice and reasons

(6) As soon as practicable after the suspension or cancellation occurs, the Environment Minister must publish in accordance with the regulations:
  (a) notice of the suspension or cancellation; and
  (b) reasons for the suspension or cancellation.

60 Emergency suspension of effect of bilateral agreement

(1) This section applies if the Minister is satisfied that:
  (a) the State or Territory that is party to a bilateral agreement is not complying with it, or will not comply with it; and
  (b) as a result of the non-compliance, a significant impact is occurring or imminent on any matter protected by a provision of Part 3 that is relevant to an action in a class of actions to which the agreement relates.

(2) The Minister may suspend the effect of the agreement or specified provisions of the agreement for the purposes of this Act or specified provisions of this Act, by notice:
  (a) given to the appropriate Minister of the State or Territory; and
  (b) published in accordance with the regulations.

(3) The suspension continues for the shorter of the following periods:
  (a) 3 months;
  (b) the period that is specified in the notice (either by reference to time or by reference to the occurrence of an event).

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(4) Subsection (3) has effect subject to section 62.

(5) As soon as practicable after the Minister (the ***Environment Minister***) gives the appropriate Minister of the State or Territory (the ***State or Territory Minister***) notice of the suspension, the Environment Minister must consult the State or Territory Minister about the non-compliance.

(6) To avoid doubt, this section has effect despite sections 58 and 59.

61 Cancellation during suspension

(1) The Minister may give notice of the cancellation of the effect of a bilateral agreement even while its effect is suspended under section 59 or 60.

(2) The cancellation may occur even though the period of suspension has not ended.

(3) This section applies whether the cancellation or suspension has effect generally or in relation to actions in a specified class.

62 Revocation of notice of suspension or cancellation

(1) This section applies if the Minister:
  (a) has given a notice under section 59 or 60 to suspend or cancel the effect of a bilateral agreement (either generally or in relation to actions in a specified class); and
  (b) is later satisfied that the State or Territory that is party to the agreement will comply with the agreement and give effect to it in a way that:
    (i) accords with the objects of this Act and the objects of this Part; and
    (ii) promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement.

(2) The Minister must revoke the notice of suspension or cancellation by another written notice:

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(a) given to the appropriate Minister of the State or Territory; and

(b) published in accordance with the regulations.

However, the Environment Minister must not revoke the notice of cancellation after cancellation of the effect of the agreement occurs.

(3) Suspension or cancellation of the effect of the agreement does not occur if the notice of suspension or cancellation is revoked before the suspension or cancellation would otherwise occur.

(4) Suspension of the effect of the agreement ends when the notice of suspension is revoked.

63 Cancellation or suspension at request of other party

Minister must give notice of cancellation or suspension

(1) The Minister must give the appropriate Minister of a State or self-governing Territory that is party to a bilateral agreement a notice under subsection (2) or (3) if the appropriate Minister has requested a notice under that subsection in accordance with the agreement.

Notice of suspension

(2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is suspended, either generally or in relation to actions in a specified class, for a period:

(a) starting on a specified day after the day on which the notice is given; and

(b) ending on a specified later day or on the occurrence of a specified event.

Notice of cancellation

(3) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or

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specified provisions of this Act is cancelled, either generally or in relation to actions in a specified class, on a specified day after the day on which the notice is given.

Effect suspended or cancelled in accordance with notice

(4) The effect of an agreement or specified provision of an agreement is suspended or cancelled for the purposes of this Act, or of a specified provision of this Act, either generally or in relation to actions in a specified class, in accordance with the notice.

Publishing notice and reasons

(5) As soon as practicable after the suspension or cancellation occurs, the Minister must publish in accordance with the regulations:
  (a) notice of the suspension or cancellation; and
  (b) reasons for the suspension or cancellation.

64 Cancellation or suspension of bilateral agreement does not affect certain actions

Application

(1) This section explains how this Act operates in relation to an action that a person was able to take without approval under Part 9 for the purposes of a provision of Part 3 because of Division 1 of Part 4 and a provision of a bilateral agreement immediately before the cancellation or suspension of the operation of the provision of the agreement for the purposes of this Act or of any provision of this Act.

Actions approved in specified manner may be taken

(2) If the action was able to be taken without approval under Part 9 because its taking had already been approved in accordance with a management arrangement or an authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement,

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this Act continues to operate in relation to the action as if the suspension or cancellation had not occurred.

Subdivision B—Expiry of bilateral agreements

65 Expiry and review of bilateral agreements

(1) A bilateral agreement ceases to have effect for the purposes of this Act at the time when the agreement provides for it to cease to so have effect.

Note: The parties to a bilateral agreement may also agree to revoke it.

(2) The Minister must cause a review of the operation of a bilateral agreement to be carried out at least once every 5 years while the agreement remains in effect. The Minister must give a copy of the report of each review to the appropriate Minister of the State or Territory that is party to the agreement.

Note: A bilateral agreement may also provide for review of its operation.

(3) The Minister must publish the report on each subsection (2) review in accordance with the regulations.

65A Expiry of bilateral agreement does not affect certain actions

Application of subsection (2)

(1) Subsection (2) explains how this Act operates in relation to an action that a person was able to take without approval under Part 9 for the purposes of a provision of Part 3 because of Division 1 of Part 4 and a provision of a bilateral agreement immediately before the agreement ceases to have effect for the purposes of this Act under section 65.

Actions already approved may be taken

(2) This Act continues to operate in relation to the action as if the agreement had not ceased to have effect if the action was able to be taken without approval under Part 9 because its taking had already been approved in accordance with a management arrangement or

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an authorisation process that was a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement.

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Section 66

Chapter 4—Environmental assessments and approvals

Part 6—Simplified outline of this Chapter

66 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

This Chapter deals with assessment and approval of actions that Part 3 prohibits without approval (***controlled actions***). (It does not deal with actions that a bilateral agreement declares not to need approval.)

A person proposing to take an action, or a government body aware of the proposal, may refer the proposal to the Minister so he or she can decide:

(a) whether his or her approval is needed to take the action; and

(b) how to assess the impacts of the action to be able to make an informed decision whether or not to approve the action.

An assessment may be done using:

(a) a process laid down under a bilateral agreement; or

(b) a process specified in a declaration by the Minister; or

(c) a process accredited by the Minister; or

(ca) information included in the referral; or

(d) preliminary documentation provided by the proponent; or

(e) a public environment report; or

(f) an environmental impact statement; or

(g) a public inquiry.

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Once the report of the assessment is given to the Minister, he or she must decide whether or not to approve the action, and what conditions to attach to any approval.

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Part 7—Deciding whether approval of actions is needed

Division 1—Referral of proposals to take action

67 What is a *controlled action*?

An action that a person proposes to take is a ***controlled action*** if the taking of the action by the person without approval under Part 9 for the purposes of a provision of Part 3 would be (or would, but for section 25AA or 28AB, be) prohibited by the provision. The provision is a ***controlling provision*** for the action.

67A Prohibition on taking controlled action without approval

A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the relevant provision of Part 3.

Note: A person can be restrained from contravening this section by an injunction under section 475.

68 Referral by person proposing to take action

(1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

(2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

(3) In a referral under this section, the person must state whether or not the person thinks the action the person proposes to take is a controlled action.

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(4) If the person states that the person thinks the action is a controlled action, the person must identify in the statement each provision that the person thinks is a controlling provision.

(5) Subsections (1) and (2) do not apply in relation to a person proposing to take an action if the person has been informed by the Minister under section 73 that the proposal has been referred to the Minister.

(6) This section is affected by section 68A.

68A Actions proposed to be taken under a contract etc.

(1) This section applies in relation to an action that is proposed to be taken under a contract or an agreement, arrangement or understanding, other than:

(a) a subcontract; or

(b) an agreement, arrangement or understanding entered into for the purposes of a contract or another agreement, arrangement or understanding.

Note: A person proposing to take an action under a subcontract, or an agreement, arrangement or understanding entered into for the purposes of a contract or another agreement, arrangement or understanding, is not required or permitted to refer the proposal to take the action to the Minister under section 68.

(2) For the purposes of section 68 and subject to subsection (3), a reference to, or relating to, a person proposing to take the action is a reference to, or relating to, any of the following persons:

(a) a party to the contract, agreement, arrangement or understanding for whose benefit the action is proposed to be taken;

(b) a person who:

(i) requested or procured, or proposes to request or procure, the creation of the contract, agreement, arrangement or understanding; and

(ii) is to be responsible for controlling and directing the taking of the proposed action.

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(3) If a person (the ***first person***) referred to in paragraph (2)(a) or (b) refers a proposal to take the action to the Minister under section 68:

(a) no other person is required or permitted to refer a proposal to take the action to the Minister under section 68; and

(b) for the purposes of this Chapter, a reference to, or relating to, the person proposing to take the action is a reference to, or relating to, the first person.

(4) For the purposes of this section, a reference to a contract or subcontract or an agreement, arrangement or understanding includes a reference to a proposed contract, proposed subcontract, proposed agreement, proposed arrangement or proposed understanding.

(5) Nothing in this section is intended to affect the capacity of a person to refer a proposal to take an action to the Minister under subsection 68(1) or (2) on behalf of the person proposing to take the action.

69 State or Territory may refer proposal to Minister

(1) A State, self-governing Territory or agency of a State or self-governing Territory that is aware of a proposal by a person to take an action may refer the proposal to the Minister for a decision whether or not the action is a controlled action, if the State, Territory or agency has administrative responsibilities relating to the action.

(2) This section does not apply in relation to a proposal by a State, self-governing Territory or agency of a State or self-governing Territory to take an action.

Note: Section 68 applies instead.

70 Minister may request referral of proposal

(1) If the Minister believes a person proposes to take an action that the Minister thinks may be or is a controlled action, the Minister may request:

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(a) the person; or

(b) a State, self-governing Territory or agency of a State or self-governing Territory that the Minister believes has administrative responsibilities relating to the action;

to refer the proposal to the Minister within 15 business days or a longer period agreed by the Minister and the requested person, State, Territory or agency (as appropriate).

Note 1: If the proposal to take the action is not referred, the person cannot get an approval under Part 9 to take the action. If taking the action without approval contravenes Part 3, an injunction could be sought to prevent or stop the action, or the person could be ordered to pay a pecuniary penalty.

Note 2: Section 156 sets out rules about time limits.

(2) In making a request, the Minister must act in accordance with the regulations (if any).

Deemed referral of proposal

(3) If:

(a) the Minister has made a request under subsection (1); and

(b) the period for compliance with the request has ended; and

(c) the requested person has not referred the proposal to the Minister in accordance with the request;

the Minister may, within 20 business days after the end of that period, determine in writing that this Act has effect as if:

(d) if paragraph (1)(a) applies—the requested person had referred the proposal to the Minister under subsection 68(1) at the time the determination was made; or

(e) if paragraph (1)(b) applies—the requested person had referred the proposal to the Minister under subsection 69(1) at the time the determination was made.

(4) A determination under subsection (3) has effect accordingly.

(5) A copy of a determination under subsection (3) is to be given to the requested person.

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(6) Subsection 68(3) and section 72 do not apply to a referral covered by subsection (3) of this section.

(8) Subsection 74(3) applies to a referral covered by subsection (3) of this section as if the reference in paragraph 74(3)(a) to the referral were a reference to the determination concerned.

71 Commonwealth agency may refer proposal to Minister

(1) A Commonwealth agency that is aware of a proposal by a person to take an action may refer the proposal to the Minister for a decision whether or not the action is a controlled action, if the agency has administrative responsibilities relating to the action.

(2) This section does not apply in relation to a proposal by the Commonwealth or a Commonwealth agency to take an action.

Note: Section 68 applies instead.

72 Form and content of referrals

(1) A referral of a proposal to take an action must be made in a way prescribed by the regulations.

(2) A referral of a proposal to take an action must include the information prescribed by the regulations.

(3) A referral of a proposal to take an action may include alternative proposals relating to any of the following:
(a) the location where the action is to be taken;
(b) the time frames within which the action is to be taken;
(c) the activities that are to be carried out in taking the action.

73 Informing person proposing to take action of referral

As soon as practicable after receiving a referral under section 69 or 71 of a proposal by a person to take an action, the Minister must:
(a) inform the person of the referral; and

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(b) invite the person to give the Minister relevant information about whether the action is a controlled action, within 10 business days.

73A Informing Great Barrier Reef Marine Park Authority of proposal affecting Great Barrier Reef Marine Park

If:

(a) a proposal to take an action is referred to the Minister; and

(b) the action, or a component of the action, is to be taken in the Great Barrier Reef Marine Park;

the Minister must, as soon as practicable after receiving the referral, give a copy of the referral to the Great Barrier Reef Marine Park Authority.

74 Inviting provision of information on referred proposal

Inviting other Commonwealth Ministers to provide information

(1) As soon as practicable after receiving a referral of a proposal to take an action, the Minister (the ***Environment Minister***) must:

(a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and

(b) invite each other Minister informed to give the Environment Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.

Inviting comments from the Australian Heritage Council

(1A) If the Minister thinks, in relation to an action that is the subject of a proposal referred to the Minister, that section 15B or 15C could be a controlling provision for the proposed action because of National Heritage values of a National Heritage place, the Minister may invite the Australian Heritage Council to give the Minister comments, within 10 business days (measured in Canberra), on whether the proposed action is a controlled action.

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Note: Sections 15B and 15C protect the National Heritage values of National Heritage places.

(1B) If the Minister thinks, in relation to an action that is the subject of a proposal referred to the Minister, that section 23, 24A, 24B, 24C, 26, 27A, 27B, 27C or 28 could be a controlling provision for the proposed action because of heritage values of a place, the Minister may invite the Australian Heritage Council to give the Minister comments, within 10 business days (measured in Canberra), on whether the proposed action is a controlled action.

Note: Sections 23, 24A, 24B, 24C, 26, 27A, 27B, 27C and 28 protect the environment, which includes the heritage values of places. See the definition of ***environment*** in section 528.

Inviting comments from appropriate State or Territory Minister

(2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must, if he or she thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance):

(a) inform the appropriate Minister of the State or Territory; and

(b) invite that Minister to give the Environment Minister within 10 business days:

(i) comments on whether the proposed action is a controlled action; and

(ii) information relevant to deciding which approach would be appropriate to assess the relevant impacts of the action (including if the action could be assessed under a bilateral agreement).

Note: Subsection (2) also applies in relation to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

Inviting public comment

(3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the internet:

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(a) the referral; and

(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

Note: If the action is also the subject of a permit application under section 200, 215, 237 or 257 and the application is made at the same time as the referral, the referral and invitation for comments that must be published under this subsection may be published together with the application and invitation for comments that must be published under section 200, 215, 237 or 257.

Non-disclosure of commercial-in-confidence information

(3A) The Environment Minister may refuse to cause to be published on the internet, under subsection (3), so much of the information included in a referral as the Minister is satisfied is commercial-in-confidence.

(3B) The Environment Minister must not be satisfied that particular information included in a referral is commercial-in-confidence unless a person demonstrates to the Minister that:

(a) release of the information would cause competitive detriment to the person; and

(b) the information is not in the public domain; and

(c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

(d) the information is not readily discoverable.

74A Minister may request referral of a larger action

(1) If the Minister receives a referral in relation to a proposal to take an action by a person, and the Minister is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister may decide to not accept the referral.

(2) If the Minister decides to not accept a referral under subsection (1), the Minister:

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(a) must give written notice of the decision to the person who referred the proposal to the Minister; and

(b) must give written notice of the decision to the person who is proposing to take the action that was the subject of the referral; and

(c) may, under section 70, request of the person proposing to take the action that was the subject of the referral, that they refer the proposal, to take the larger action, to the Minister.

(3) To avoid doubt, sections 73 and 74 do not apply to a referral that has not been accepted in accordance with subsection (1).

(4) If the Minister decides to accept a referral under subsection (1), the Minister must, at the time of making a decision under section 75:

(a) give written notice of the decision to the person who referred the proposal to the Minister;

(b) publish in accordance with the regulations (if any), a copy or summary of the decision.

74AA Offence of taking action before decision made in relation to referral etc.

Referral made: taking action while decision making process still going on

(1) A person commits an offence if:

(a) the person takes an action; and

(b) either:

(i) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister by the person under section 68; or

(ii) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister under section 69 or 71 and the person has been informed of the referral under section 73; and

(c) the referral has not been withdrawn under section 170C; and

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(d) the Minister has not decided under subsection 74A(1) not to accept the referral; and

(e) provisions of this Chapter are not stopped by Division 1A from applying in relation to the referral; and

(f) provisions of this Chapter are not stopped by section 155 from applying because of the referral in relation to the action (or a larger action of which the action is a component); and

(g) no decision that the action (or a larger action of which the action is a component) is not a controlled action is in operation under section 75 in relation to the referral; and

(h) no decision is in operation under Part 9 in relation to the referral approving, or not approving, the taking of the action (or a larger action of which the action is a component).

Penalty: 500 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) Subsection (1) does not apply to the taking of an action by a person if:

(a) the taking of the action is reasonably necessary in order to comply with a requirement or request made under this Part or Part 8 or 9 in relation to the action (or a larger action of which the action is a component); and

(b) before taking the action, the person gave the Minister written notice of the taking of the action; and

(c) the notice was given in accordance with any applicable requirements of the regulations.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

Referral requested: taking action before requested referral is made

(3) A person commits an offence if:

(a) the person takes an action; and

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(b) the Minister, under section 70, has requested the referral by the person of a proposal to take the action (or a larger action of which the action is a component) to the Minister; and

(c) the request has not been revoked; and

(d) the referral has not been made.

Penalty: 500 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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Division 1A—Decision that action is clearly unacceptable

74B Application of this Division

(1) This Division applies to the referral of a proposal to take an action if, within 20 business days after the Minister receives the referral:

(a) the Minister considers, on the basis of the information in the referral, that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and

(b) the Minister decides that this Division should apply to the referral.

(2) If this Division applies to a referral, any other provisions of this Chapter that would, apart from this subsection, have applied to the referral cease to apply to the referral.

(3) Subsection (2) has effect subject to paragraph 74D(6)(a).

74C Informing person proposing to take action that action is clearly unacceptable

(1) As soon as practicable after making the decision under paragraph 74B(1)(b) in relation to a referral, the Minister must give written notice of the decision to:

(a) the person proposing to take the action that is the subject of the referral; and

(b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action that is the subject of the referral).

(2) The notice must:

(a) state that the Minister considers that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and

(b) set out the reasons for the Minister's decision.

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(3) After receiving the notice under subsection (1), the person proposing to take the action may:

(a) withdraw the referral and take no further action in relation to the proposed action; or

(b) withdraw the referral and refer a new proposal to take a modified action to the Minister in accordance with Division 1; or

(c) request the Minister, in writing, to reconsider the referral.

Note 1: Section 170C sets out the procedure for withdrawing a referral.

Note 2: A referral of a proposal to take a modified action will be a new referral for the purposes of this Chapter.

74D Procedure if Minister is requested to reconsider referral

(1) This section applies if the Minister receives a request under paragraph 74C(3)(c) to reconsider a referral.

Inviting public comment

(2) The Minister must, within 10 business days after receiving the request, publish on the internet:

(a) a notice stating that the Minister proposes not to approve the taking of the action that is the subject of the referral; and

(b) the reasons for the Minister's decision; and

(c) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing on:

(i) the impacts that the action would have on a matter protected by a provision of Part 3; and

(ii) the Minister's proposal to refuse to approve the taking of the action.

Report about relevant impacts of action

(3) Within 10 business days after the end of the period for comment under paragraph (2)(c), the Secretary must:

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(a) prepare a written report about the relevant impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3; and

(b) give the Minister:

(i) the report; and

(ii) a copy of any comments received by the Secretary within the period for comment.

In preparing the report, the Secretary must have regard to the comments referred to in subparagraph (b)(ii).

Decision following reconsideration

(4) Within 20 business days after receiving the report under subsection (3), the Minister must:

(a) if the Minister still considers that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3—decide to refuse to approve the taking of the action; or

(b) decide that the referral is to be dealt with under the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral.

(5) If the Minister decides to refuse to approve the taking of the action, the Minister must, within 10 business days after making the decision, give notice of the decision to:

(a) the person proposing to take the action; and

(b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action).

Note: The person proposing to take the action may request reasons for the refusal and the Minister must give them. See section 13 of the *Administrative Decisions (Judicial Review) Act 1977*.

(6) If the Minister makes a decision under paragraph (4)(b):

(a) the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral start to apply to the referral; and

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(b) for the purposes of the application of those provisions, a day is not to be counted as a business day if it is:

(i) on or after the day the Minister received the referral; and

(ii) on or before the day the Minister makes the decision under paragraph (4)(b).

Note: If the Minister had already complied with section 74 in relation to the referral before the Minister made the decision under paragraph 74B(1)(b) in relation to the referral, the Minister is not required to comply with section 74 again.

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Division 2—Ministerial decision whether action needs approval

75 Does the proposed action need approval?

Is the action a controlled action?

(1) The Minister must decide:

(a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and

(b) which provisions of Part 3 (if any) are controlling provisions for the action.

Note: The Minister may revoke a decision made under subsection (1) about an action and substitute a new decision. See section 78.

(1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Minister must consider public comment

(1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:

(a) in response to the invitation under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and

(b) within the period specified in the invitation.

Considerations in decision

(2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:

(a) the Minister must consider all adverse impacts (if any) the action:

(i) has or will have; or

(ii) is likely to have;

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on the matter protected by each provision of Part 3; and

(b) must not consider any beneficial impacts the action:

(i) has or will have; or

(ii) is likely to have;

on the matter protected by each provision of Part 3.

Note: ***Impact*** is defined in section 527E.

(2A) For the purposes of subsection (2), if the provision of Part 3 is subsection 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 24D(3), 24E(3), 26(1) or 27A(1), then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in or on a Commonwealth area, a Territory, a Commonwealth marine area or Commonwealth land:

(a) has or will have; or

(b) is likely to have;

on the matter.

(2AA) For the purposes of subsection (2), if the provision of Part 3 is subsection 24B(1) or 24C(1) or (3), then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in the Great Barrier Reef Marine Park:

(a) has or will have; or

(b) is likely to have;

on the matter.

(2B) Without otherwise limiting any adverse impacts that the Minister must consider under paragraph (2)(a), the Minister must not consider any adverse impacts of:

(a) any RFA forestry operation to which, under Division 4 of Part 4, Part 3 does not apply; or

(b) any forestry operations in an RFA region that may, under Division 4 of Part 4, be undertaken without approval under Part 9.

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Designating a proponent of the action

(3) If the Minister decides that the action is a controlled action, the Minister must designate a person as proponent of the action.

Consent to designation

(4) The Minister may designate a person who does not propose to take the action only if:
  (a) the person agrees to being designated; and
  (b) the person proposing to take the action agrees to the designation.

Timing of decision and designation

(5) The Minister must make the decisions under subsection (1) and, if applicable, the designation under subsection (3), within 20 business days after the Minister receives the referral of the proposal to take the action.

Note: If the Minister decides, under subsection 75(1), that the action is a controlled action, the Minister must, unless the Minister has requested more information under subsection 76(3) or section 89, decide on the approach to be used for assessment of the relevant impacts of the action on the same day as the Minister makes the decision under subsection 75(1)—see subsection 88(2).

Time does not run while further information being sought

(6) If the Minister has requested more information under subsection 76(1) or (2) for the purposes of making a decision, a day is not to be counted as a business day for the purposes of subsection (5) if it is:
  (a) on or after the day the Minister requested the information; and
  (b) on or before the day on which the Minister receives the last of the information requested.

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Running of time may be suspended by agreement

(7) The Minister and the person proposing to take the action may agree in writing that days within a period worked out in accordance with the agreement are not to be counted as business days for the purposes of subsection (5). If the agreement is made, those days are not to be counted for the purposes of that subsection.

76 Minister may request more information for making decisions

(1) If the Minister believes on reasonable grounds that the referral of a proposal to take an action does not include enough information for the Minister to decide:

(a) whether the action is a controlled action; or

(b) which provisions of Part 3 (if any) are controlling provisions for the action;

the Minister may request the person proposing to take the action to provide specified information relevant to making the decision.

(2) Before the Minister makes the decisions under subsection 75(1) in relation to the action, the Minister may request the person proposing to take the action to provide information about whether or not the action is a component of a larger action that is proposed to be taken by the person.

(3) If the Minister believes on reasonable grounds that the information given to the Minister in relation to the action is not enough to allow the Minister to make an informed decision on the approach to be used for assessment of the relevant impacts of the action, the Minister may request the person proposing to take the action to provide specified information relevant to making the decision.

(4) Without limiting subsection (3), if the action is to be taken in a State or self-governing Territory, the Minister may request the person proposing to take the action to provide information about:

(a) whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and

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(b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.

(5) The Minister may make a request under subsection (3) even if the Minister has not yet made the decisions under subsection 75(1) in relation to the action.

77 Notice and reasons for decision

Giving notice

(1) Within 10 business days after deciding whether an action that is the subject of a proposal referred to the Minister is a controlled action or not, the Minister must:

(a) give written notice of the decision to:

(i) the person proposing to take the action; and

(ii) if the Minister has designated as proponent of the action a person who does not propose to take the action—that person; and

(iii) if the Minister decided that the action is a controlled action because of Division 1 of Part 3 (which deals with matters of national environmental significance)—the appropriate Minister of each State or self-governing Territory in which the action is to be taken; and

(b) publish notice of the decision in accordance with the regulations.

Note 1: Section 156 sets out rules about time limits.

Note 2: Subparagraph (1)(a)(iii) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

Notice must identify any applicable controlling provisions

(2) If the decision is that the action is a controlled action, the notice must identify each of the controlling provisions.

Reasons for decision

(4) The Minister must give reasons for the decision to a person who:

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(a) has been given the notice; and

(b) within 28 days of being given the notice, has requested the Minister to provide reasons.

The Minister must do so as soon as practicable, and in any case within 28 days of receiving the request.

77A Action to be taken in a particular manner

(1) If, in deciding whether the action is a controlled action or not, the Minister has made a decision (the ***component decision***) that a particular provision of Part 3 is not a controlling provision for the action because the Minister believes it will be taken in a particular manner, the notice, to be provided under section 77, must set out the component decision, identifying the provision and the manner.

Note: The Minister may decide that a provision of Part 3 is not a controlling provision for an action because he or she believes that the action will be taken in a manner that will ensure the action will not have (and is not likely to have) an adverse impact on the matter protected by the provision.

(1A) For the purposes of subsection (1), it does not matter whether or not the Minister believes that the action will be taken in accordance with:

(a) an accredited management arrangement or an accredited authorisation process for the purposes of a declaration under section 33; or

(b) a bioregional plan to which a declaration made under section 37A relates; or

(c) a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of a bilateral agreement.

(2) A person must not take an action, that is the subject of a notice that includes a particular manner under subsection (1), in a way that is inconsistent with the manner specified in the notice.

Civil penalty:

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(a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;
(b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.

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Division 3—Reconsideration of decisions

78 Reconsideration of decision

Limited power to vary or substitute decisions

(1) The Minister may revoke a decision (the ***first decision***) made under subsection 75(1) about an action and substitute a new decision under that subsection for the first decision, but only if:

(a) the Minister is satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action:

(i) has or will have; or

(ii) is likely to have;

on a matter protected by a provision of Part 3; or

(aa) the Minister is satisfied that the revocation and substitution is warranted by a substantial change in circumstances that was not foreseen at the time of the first decision and relates to the impacts that the action:

(i) has or will have; or

(ii) is likely to have;

on a matter protected by a provision of Part 3; or

(b) the following requirements are met:

(i) the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77;

(ii) the Minister is satisfied that the action is not being, or will not be, taken in the manner identified; or

(ba) the following requirements are met:

(i) the first decision was that the action was not a controlled action because of a provision of a bilateral agreement and a management arrangement or an authorisation process that is a bilaterally accredited

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management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement;

(ii) the provision of the agreement no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in force under, or set out in, a law of a State or a self-governing Territory identified in or under the agreement; or

(c) the following requirements are met:

(i) the first decision was that the action was not a controlled action because of a declaration under section 33 and a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration;

(ii) the declaration no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in operation under, or set out in, a law of the Commonwealth identified in or under the declaration; or

(ca) the following requirements are met:

(i) the first decision was that the action was not a controlled action because of a declaration under section 37A and a bioregional plan to which the declaration relates;

(ii) the declaration no longer operates in relation to the action, or the bioregional plan is no longer in force; or

(d) the Minister is requested under section 79 to reconsider the decision.

Note 1: Subsection 75(1) provides for decisions about whether an action is a controlled action and what the controlling provisions for the action are.

Note 2: A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca). See section 78A.

Note 3: If the Minister decides to revoke a decision under subsection (1) and substitute a new decision for it, the Minister is not required to carry

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out the processes referred to in sections 73 and 74 again before making the new decision.

Reversing decision that provision of Part 3 is not controlling provision

(2) A provision of Part 3 letting an action be taken if the Minister has decided that a particular provision (the ***prohibiting provision***) of that Part is not a controlling provision for the action does not prevent the Minister from acting under subsection (1) to revoke a decision that the prohibiting provision is not a controlling provision for an action and substitute a decision that the prohibiting provision is a controlling provision for the action.

Decision not to be revoked after approval granted or refused or action taken

(3) The Minister must not revoke the first decision after:
  (a) the Minister has granted or refused an approval of the taking of the action; or
  (b) the action is taken.

Decision not to be revoked in certain circumstances

(3A) The Minister must not revoke the first decision if:
  (a) the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77; and
  (b) the identified manner included that the action would be taken in accordance with a management arrangement made, approved or administered by the government of a State or self-governing Territory; and
  (c) the action is being taken; and
  (d) either:
    (i) if the Minister is requested under subsection 78A(1) to reconsider the decision—at the time the request is made,

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the way in which the action is being taken has been ongoing or recurring for at least 5 years; or

(ii) otherwise—the way in which the action is being taken has been ongoing or recurring for at least 5 years.

General effect of change of decision

(4) When the first decision is revoked and a new decision is substituted for it:

(a) any provisions of this Chapter that applied in relation to the action because of the first decision cease to apply in relation to the action; and

(b) any provisions of this Chapter that are relevant because of the new decision apply in relation to the action.

Change of designation of proponent

(5) If the Minister believes a person (the ***first proponent***) designated under section 75 as proponent of an action is no longer an appropriate person to be the designated proponent of the action, the Minister may revoke the designation and designate another person (the ***later proponent***) as proponent of the action.

Consent to designation

(6) The Minister may designate the other person as proponent of the action only if:

(a) he or she consents to it and the person proposing to take the action agrees to it; or

(b) the other person is the person proposing to take the action.

Effect of change of designated proponent

(7) If the Minister revokes the designation of the first proponent and designates the later proponent:

(a) the provisions of this Chapter that applied to the first proponent cease to apply to the first proponent in relation to the action but apply to the later proponent; and

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(b) for the purposes of those provisions the later proponent is taken to have done anything the first proponent did in relation to the action; and

(c) for the purposes of those provisions anything done in relation to the first proponent in relation to the action is taken to have been done in relation to the later proponent.

78A Request for reconsideration of decision by person other than State or Territory Minister

(1) A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca).

Note: Section 79 deals with requests for reconsideration by a Minister of a State or self-governing Territory.

(2) A request under subsection (1) must:

(a) be in writing; and

(b) set out the basis on which the person thinks the decision should be reconsidered; and

(c) if the regulations specify other requirements for requests under subsection (1)—comply with those requirements.

(3) If a request is made under subsection (1) in relation to a decision that an action is a controlled action, or that particular provisions are controlling provisions for an action, then:

(a) if the request is made by the designated proponent of the action—Part 8 ceases to apply in relation to the action until the Minister makes a decision in relation to the request; but

(b) if the request is made by another person—the application of Part 8 in relation to the action is not affected by the making of the request (subject to the outcome of the reconsideration).

(4) If:

(a) because of paragraph (3)(a), Part 8 has ceased to apply in relation to an action; and

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(b) the Minister confirms the decision that is the subject of the request under subsection (1);

then:

(c) the application of Part 8 in relation to the action resumes (as does any assessment process under that Part that had previously commenced in relation to the action); and

(d) for the purposes of the resumed application of Part 8, a day is not to be counted as a business day if it is:

(i) on or after the day the Minister received the request; and

(ii) on or before the day the Minister confirms the decision.

78B Minister must inform interested persons of request and invite comments

(1) The Minister (the ***Environment Minister***) must comply with this section if he or she receives a request under section 78A to reconsider a decision made under subsection 75(1) about an action.

Informing designated proponent of request and inviting comments

(2) If the request is made by a person other than the designated proponent of the action, the Environment Minister must:

(a) inform the designated proponent of the request in accordance with subsection (3); and

(b) invite the designated proponent to give the Environment Minister, within 10 business days, comments on the request.

(3) For the purpose of paragraph (2)(a), the Environment Minister must inform the designated proponent of the request by giving the designated proponent such information relating to the request as the Minister considers appropriate. The Minister need not (for example) reveal the identity of the person who made the request.

Inviting other Commonwealth Ministers to provide information

(4) The Environment Minister must:

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(a) inform any other Minister who the Environment Minister believes has administrative responsibilities relating to the action of the request; and

(b) invite each Minister informed to give the Environment Minister, within 10 business days, information about whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

Inviting comments from appropriate State or Territory Minister

(5) If the request relates to an action proposed to be taken in a State or self-governing Territory and the Environment Minister thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance), the Environment Minister must:

(a) inform the appropriate Minister of the State or Territory of the request; and

(b) invite that Minister to give the Environment Minister, within 10 business days:

(i) comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action; and

(ii) any other information that the Minister of the State or Territory considers relevant to the reconsideration.

Note: Subsection (5) also applies in relation to a request that relates to an action that is to be taken in an area offshore from a State or the Northern Territory. See section 157.

Inviting public comment

(6) The Environment Minister must publish on the internet:

(a) the request; and

(b) an invitation for anyone to give the Environment Minister, within 10 business days (measured in Canberra), comments in writing on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

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78C Minister must reconsider decision and give notice of outcome

Reconsideration of decision

(1) As soon as practicable after the end of the time within which information or comments may be given under section 78B in relation to a request under section 78A to reconsider a decision about an action, the Minister must:
  (a) reconsider the decision; and
  (b) either:
    (i) confirm the decision; or
    (ii) revoke the decision in accordance with subsection 78(1), and substitute a new decision for it.

(1A) To avoid doubt, the Minister must not revoke the decision if subsection 78(3) or (3A) applies in relation to it.

Notice of outcome of reconsideration

(2) The Minister must give written notice of the outcome of the reconsideration to:
  (a) the person who requested the reconsideration; and
  (b) the person proposing to take the action (if that person is not the person referred to in paragraph (a)); and
  (c) the designated proponent of the action (if the designated proponent is not the person referred to in paragraph (a) or (b)); and
  (d) if the reconsideration relates to an action referred to in subsection 78B(5)—the appropriate Minister of the State or Territory.

(3) After giving notice as described in subsection (2), the Minister must publish notice of the outcome of the reconsideration. The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way the Minister considers appropriate.

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Reasons for outcome of reconsideration

(4) The Minister must give reasons for the outcome of the reconsideration to a person who:

(a) has been given notice of the outcome of the reconsideration under paragraph (2)(a), (b) or (c); and

(b) within 28 days after being given the notice, has requested the Minister to provide reasons.

The Minister must do so as soon as practicable, and in any case within 28 days after receiving the request.

79 Reconsideration of decision on request by a State or Territory

(1) This section applies if the Minister (the ***Environment Minister***) has made a decision under subsection 75(1) about whether a provision of Division 1 of Part 3 is a controlling provision for an action proposed to be taken in a State or a self-governing Territory.

Note 1: Division 1 of Part 3 deals with requirements for approvals for actions involving matters of national environmental significance.

Note 2: This section also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(2) Within 10 business days after the appropriate Minister of the State or Territory is notified of the decision under subparagraph 77(1)(a)(iii), that Minister may request the Environment Minister to reconsider the Environment Minister's decisions made under subsection 75(1).

(3) Within 20 business days after receiving a request to reconsider a decision, the Environment Minister must:

(a) reconsider the decision; and

(b) either confirm it or revoke it and substitute a new decision for it; and

(c) give written notice of the outcome of the reconsideration and reasons for the outcome to:

(i) the Minister who requested the reconsideration; and

(ii) the person proposing to take the action; and

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(iii) the designated proponent of the action; and

(d) after giving notice as described in paragraph (c), publish notice of the outcome and the reasons for it in accordance with the regulations.

Note: Section 156 sets out rules about time limits.

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Part 8—Assessing impacts of controlled actions

Division 1—Simplified outline of this Part

80 Simplified outline of this Part

The following is a simplified outline of this Part:

This Part provides for the assessment of impacts of controlled actions, to provide information for decisions whether or not to approve the taking of the actions. However, this Part does not apply to actions that a bilateral agreement or Ministerial declaration says are to be assessed in another way.

For actions that are to be assessed under this Part, the Minister must choose one of the following methods of assessment:

(a) an accredited assessment process;
(aa) an assessment on referral information (see Division 3A);
(b) an assessment on preliminary documentation (see Division 4);
(c) a public environment report (see Division 5);
(d) an environmental impact statement (see Division 6);
(e) a public inquiry (see Division 7).

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Division 2—Application of this Part

81 Application

(1) This Part applies to the assessment of the relevant impacts of an action that the Minister has decided under Division 2 of Part 7 is a controlled action.

(2) This section has effect subject to sections 83 and 84.

(3) This section does not limit section 82.

82 What are the *relevant impacts* of an action?

If the Minister has decided the action is a controlled action

(1) If the Minister has decided under Division 2 of Part 7 that an action is a controlled action, the ***relevant impacts*** of the action are the impacts that the action:

(a) has or will have; or

(b) is likely to have;

on the matter protected by each provision of Part 3 that the Minister has decided under that Division is a controlling provision for the action.

If the Minister has not decided whether the action is controlled

(2) If an action is a controlled action or would be apart from Division 1, 2, 3 or 3A of Part 4 (which provide that approval under Part 9 is not needed for an action covered by a bilateral agreement or declaration)—the ***relevant impacts*** of the action are impacts that the action:

(a) has or will have; or

(b) is likely to have;

on the matter protected by each provision of Part 3 that is a controlling provision for the action or would be apart from whichever of those Divisions is relevant.

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Relationship between subsections (1) and (2)

(3) Subsection (1) has effect despite subsection (2).

(4) For the purposes of subsections (1) and (2), if subsection 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 24D(3), 24E(3), 26(1) or 27A(1) is, or would be, a controlling provision for the action, then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in or on a Commonwealth area, a Territory, a Commonwealth marine area or Commonwealth land:

(a) has or will have; or

(b) is likely to have;

on the matter.

(5) For the purposes of subsections (1) and (2), if subsection 24B(1) or 24C(1) or (3) is or would be a controlling provision for the action, then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in the Great Barrier Reef Marine Park:

(a) has or will have; or

(b) is likely to have;

on the matter.

83 This Part does not apply if action covered by bilateral agreement

(1) This Part does not apply in relation to an action if:

(a) the action is to be taken in a State or self-governing Territory; and

(b) a bilateral agreement between the Commonwealth and the State or Territory declares that actions in a class that includes the action need not be assessed under this Part; and

(c) the provision of the bilateral agreement making the declaration is in operation in relation to the action.

Note 1: Subsection (1) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

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Note 2: Section 47 deals with bilateral agreements making declarations described in paragraph (1)(b).

Note 2A: An action will be in a class of actions declared not to need assessment under this Part only if the action has been assessed in a manner specified in the bilateral agreement.

Note 3: Division 3 of Part 5 explains how the operation of a bilateral agreement may be ended or suspended. Also, under section 49, bilateral agreements do not operate in relation to actions in Commonwealth areas or in the Great Barrier Reef Marine Park, or actions taken by the Commonwealth or a Commonwealth agency, unless they expressly provide that they do.

(2) If the action is to be taken in 2 or more States or self-governing Territories, this section does not operate unless it operates in relation to each of those States or Territories.

84 This Part does not apply if action covered by declaration

When this Part does not apply

(1) This Part does not apply in relation to an action if:
  (a) the Minister has declared in writing that actions in a class that includes the action need not be assessed under this Part; and
  (b) the declaration is in operation.

Note: An action will be in a class of actions declared not to need assessment under this Part only if the action has been assessed in a manner specified in the declaration.

Declaration

(2) The Minister may declare in writing that actions in a specified class of actions assessed by the Commonwealth or a Commonwealth agency in a specified manner do not require assessment under this Part.

Prerequisites for making a declaration

(3) The Minister may make a declaration only if he or she is satisfied that:

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(a) assessment of an action in the specified manner will include assessment of the impacts the action:
(i) has or will have; or
(ii) is likely to have;
on each matter protected by a provision of Part 3; and
(b) the specified manner of assessment meets the standards (if any) prescribed by the regulations; and
(c) if the taking of an action assessed in the specified manner must be approved under Part 9, he or she will receive a report including, or accompanied by, enough information about the relevant impacts of the action to let him or her make an informed decision whether or not to approve under Part 9 (for the purpose of each controlling provision) the taking of the action.

Further requirements for making a declaration

(3A) Sections 34A, 34B, 34BA, 34C, 34D, 34E and 34F apply in relation to the making of a declaration under this section in the same way that they apply to the making of a declaration under section 33.

Specified manner of assessment

(4) The manner of assessment that may be specified in a declaration includes assessment by a Commonwealth agency under a law of the Commonwealth. This does not limit subsection (2).

Publishing declaration

(5) The Minister must publish a declaration in accordance with the regulations.

Revoking declaration

(6) The Minister may, by instrument in writing published in accordance with the regulations, revoke a declaration.

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Minister must not give preference

(7) In making or revoking a declaration relating to an action taken:

(a) by a person for the purposes of trade between Australia and another country or between 2 States; or

(b) by a constitutional corporation;

the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

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Division 3—Decision on assessment approach

Subdivision A—Simplified outline of this Division

85 Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister must choose one of the following ways of assessing the relevant impacts of an action the Minister has decided is a controlled action:

(a) an accredited assessment process;
(aa) an assessment on referral information;
(b) an assessment on preliminary documentation;
(c) a public environment report;
(d) an environmental impact statement;
(e) a public inquiry.

Subdivision B—Deciding on approach for assessment

87 Minister must decide on approach for assessment

Minister must choose one assessment approach

(1) The Minister must decide which one of the following approaches must be used for assessment of the relevant impacts of an action that the Minister has decided is a controlled action:

(a) assessment by an accredited assessment process;
(aa) assessment on referral information under Division 3A;
(b) assessment on preliminary documentation under Division 4;
(c) assessment by public environment report under Division 5;
(d) assessment by environmental impact statement under Division 6;
(e) assessment by inquiry under Division 7.

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Considerations in making choice

(3) In making the decision, the Minister must consider:
  (a) information relating to the action given to the Minister in the referral of the proposal to take the action; and
  (b) any other information available to the Minister about the relevant impacts of the action that the Minister considers relevant (including information in a report on the impacts of actions under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
  (c) any relevant information received in response to an invitation under subparagraph 74(2)(b)(ii); and
  (d) the matters (if any) prescribed by the regulations; and
  (e) the guidelines (if any) published under subsection (6).

Accredited assessment process

(4) The Minister may decide on an assessment by an accredited assessment process only if the Minister is satisfied that:
  (a) the process is to be carried out under a law of the Commonwealth, a State or a self-governing Territory; and
  (b) the process and the law meet the standards (if any) prescribed by the regulations; and
  (c) the process will ensure that the relevant impacts of the action are adequately assessed; and
  (d) he or she will receive a report of the outcome of the process that will provide enough information on the relevant impacts of the action to let him or her make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

Assessment on referral information

(4A) The Minister may decide on an assessment on referral information under Division 3A only if the Minister is satisfied (after considering the matters in subsection (3)) that the action meets the

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criteria prescribed in the regulations for the purposes of this subsection.

Assessment on preliminary documentation

(5) The Minister may decide on an assessment on preliminary documentation under Division 4 only if the Minister is satisfied (after considering the matters in subsection (3)) that that approach will allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

Guidelines for choosing assessment approach

(6) The Minister may publish in the *Gazette* guidelines setting out criteria for deciding which approach must be used for assessing the relevant impacts of an action.

88 Timing of decision on assessment approach

Initial decision

(1) The Minister must decide on the approach to be used for assessment of the relevant impacts of the action within 20 business days after the Minister receives the referral of the proposal to take the action.

Note: Section 156 sets out rules about time limits.

When initial decision must be made

(2) The Minister must make the decision under subsection (1) on the same day as the Minister has decided, under subsection 75(1), that the action is a controlled action, unless the Minister has requested more information under subsection 76(3) or section 89 for the purposes of deciding on the approach to be used for assessment of the relevant impacts of the action.

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Time does not run while further information sought

(4) If the Minister has requested more information in relation to the action under subsection 76(1), (2) or (3) or section 89, a day is not to be counted as a business day for the purposes of subsection (1) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

Running of time may be suspended by agreement

(5) The Minister and the designated proponent of the action may agree in writing that days within a period worked out in accordance with the agreement are not to be counted as business days for the purposes of subsection (1). If the agreement is made, those days are not to be counted for the purposes of that subsection.

89 Minister may request more information for making decision

(1) If the Minister believes on reasonable grounds that the information given to the Minister in relation to an action is not enough to allow the Minister to make an informed decision on the approach to be used for assessment of the relevant impacts of the action, the Minister may request the designated proponent to provide specified information relevant to making the decision.

(2) Without limiting subsection (1), if the action is to be taken in a State or self-governing Territory, the Minister may request the designated proponent of the action to provide information about:

(a) whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and

(b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.

(3) The Minister may make a request in relation to an action under this section even if the Minister has made a request under subsection 76(3) in relation to the action.

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90 Directing an inquiry after starting an assessment

Application

(1) This section applies if:

(a) the Minister has made a decision (the ***first decision***) under section 87 that the relevant impacts of an action must be assessed by:

(i) assessment by public environment report under Division 5; or

(ii) assessment by environmental impact statement under Division 6; and

(b) the designated proponent publishes:

(i) a draft report under section 98 (about public environment reports); or

(ii) a draft statement under section 103 (about environmental impact statements).

Revoking and substituting decision

(2) The Minister may revoke the first decision and make another decision (the ***new decision***) under section 87 (in substitution for the first decision) that the relevant impacts of the action must be assessed by an inquiry under Division 7.

Effect of revocation and substitution

(3) When the first decision is revoked and the new decision is substituted for it:

(a) whichever of Divisions 5 and 6 applied in relation to the action because of the first decision ceases to apply in relation to the action; and

(b) Division 7 applies in relation to the action.

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91 Notice of decision on assessment approach

(1) Within 10 business days after making a decision on the approach to be used for assessment of the relevant impacts of an action, the Minister must:

(a) give written notice of the decision to:

(i) the person proposing to take the action; and

(ia) the designated proponent of the action (if the designated proponent is not the person proposing to take the action); and

(ii) if the action is to be taken in a State or self-governing Territory and a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance)—the appropriate Minister of the State or Territory; and

(b) publish notice of the decision in accordance with the regulations.

Note 1: Section 156 sets out rules about time limits.

Note 2: Subparagraph (1)(a)(ii) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(1A) In the written notice of the decision, the Minister must also advise the person proposing to take the action that the person may elect under section 132B to submit an action management plan for approval.

Note: An action management plan is approved after a decision is made approving the taking of the action.

(2) If the Minister decided that the relevant impacts of the action are to be assessed by an accredited assessment process, the written notice and the published notice must specify the process.

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Division 3A—Assessment on referral information

92 Application of this Division

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by assessment on referral information under this Division.

93 Recommendation report

(1) The Secretary must comply with this section within 30 business days after the Minister makes the decision under section 87.

(2) The Secretary must prepare a draft recommendation report that includes recommendations on:
  (a) whether the taking of the action should be approved under Part 9; and
  (b) if approval is recommended, any conditions that should be attached to the approval.

(3) The Secretary must publish on the internet:
  (a) the draft recommendation report; and
  (b) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing relating to the draft recommendation report or the action.

(3A) The Secretary may refuse to publish on the internet, under subsection (3), so much of the draft recommendation report as:
  (a) is:
    (i) an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
    (ii) a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

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(b) the Secretary is satisfied is commercial-in-confidence.

(3B) The Secretary must not be satisfied that a part of the draft recommendation report is commercial-in-confidence unless a person demonstrates to the Secretary that:

(a) release of the information in that part would cause competitive detriment to the person; and

(b) the information in that part is not in the public domain; and

(c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

(d) the information in that part is not readily discoverable.

(4) After the end of the period for comment, the Secretary must finalise the draft recommendation report, taking account of any comments received within that period.

(5) As soon as practicable after finalising the draft recommendation report, the Secretary must give the Minister:

(a) the finalised recommendation report; and

(b) either:

(i) a copy of any comments received within the period for comment; or

(ii) if no comments were received within that period—a written statement to that effect.

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Division 4—Assessment on preliminary documentation

94 Application of this Division

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by assessment on preliminary documentation under this Division.

95 Direction to publish referral information and invitation to comment—no further information required

(1) This section applies if the Minister was satisfied, at the time of making the decision (the ***assessment approach decision***) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.

(2) At the same time as the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:

(a) specified information included in the referral to the Minister of the proposal to take the action; and

(b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and

(c) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.

(3) The designated proponent must comply with the direction.

Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.

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(4) A direction given under subsection (2) is not a legislative instrument.

95A Direction to publish referral information and invitation to comment—further information required

(1) This section applies if the Minister was not satisfied, at the time of making the decision (the ***assessment approach decision***) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.

(2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the designated proponent to give the Minister specified information relevant to assessing the relevant impacts of the action, including information about strategies for mitigating any adverse impacts.

(3) Within 10 business days after receiving the information requested under subsection (2), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:

(a) specified information included in the referral to the Minister of the proposal to take the action; and

(b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and

(c) specified information relating to the action that was received in response to the Minister's request under subsection (2); and

(d) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.

(4) The designated proponent must comply with the direction.

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Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.

(5) A direction given under subsection (3) is not a legislative instrument.

95B Procedure after end of period for comment

Procedure if comments are received

(1) If comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as practicable after the end of that period:

(a) prepare a document that:

(i) sets out the information given to the Minister previously in relation to the action, with any changes or additions needed to take account of the comments; and

(ii) contains a summary of the comments received and how those comments have been addressed; and

(b) give the Minister:

(i) a copy of the document prepared under paragraph (a); and

(ii) a copy of the comments received.

(1A) The designated proponent is taken not to have given the Minister the documents referred to in paragraph (1)(b) if the required fee has not been paid.

(2) Within 10 business days after the designated proponent has given the Minister the documents referred to in paragraph (1)(b), the designated proponent must publish, in accordance with the regulations, a copy of the document prepared under paragraph (1)(a).

Procedure if no comments are received

(3) If no comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as

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practicable after the end of that period, give the Minister a written statement to that effect.

(3A) The designated proponent is taken not to have given the Minister the statement referred to in subsection (3) if the required fee has not been paid.

(4) Within 10 business days after the designated proponent has given the Minister the statement referred to in subsection (3), the designated proponent must publish, in accordance with the regulations, a copy of the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires.

Definition

(5) In this section:

period for comment means the period within which comments may be given under 95(2)(c) or 95A(3)(d), as the case requires.

95C Recommendation report

(1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:

(a) whether the taking of the action should be approved under Part 9; and

(b) if approval is recommended, any conditions that should be attached to the approval.

(2) The recommendation report must be given to the Minister after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires, and before the end of the period applicable under paragraph 130(1B)(c) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

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Division 5—Public environment reports

96 Application

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by a public environment report under this Division.

96A Minister must give designated proponent written guidelines for preparation of draft public environment report

(1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft public environment report about the relevant impacts of the action. The guidelines so given are referred to as the ***PER guidelines***.

(2) The PER guidelines must be:

(a) one or more sets of standard guidelines prepared under section 96B that the Minister decides are appropriate for the preparation of the draft report in relation to the action; or

(b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft report in relation to the action—tailored guidelines prepared under section 97.

(3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft report in relation to the action, the Minister must seek to ensure that the draft report, if prepared in accordance with those guidelines, will:

(a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and

(b) address the matters (if any) prescribed by the regulations.

Note: Similar considerations apply in relation to tailored guidelines: see subsection 97(2).

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(4) The Minister must give the PER guidelines to the designated proponent:

(a) within 20 business days after the assessment approach decision was made under section 87; or

(b) if the Minister, under section 97, invites a person to comment on a draft of tailored guidelines for the preparation of the draft report within a specified period—within 20 business days after:

(i) the end of that period; or

(ii) if there is more than one such period, the end of the later or latest of those periods.

96B Standard guidelines

(1) The Minister may prepare one or more sets of standard guidelines, in writing, for the preparation of draft public environment reports about the relevant impacts of actions.

Note: See also subsection 96A(3).

(2) A set of standard guidelines must set out requirements for the content and presentation of draft public environment reports about the relevant impacts of actions.

(3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:

(a) actions that are proposed to be taken by a specified industry sector; or

(b) actions for which a specified provision of Part 3 is a controlling provision.

(4) A set of standard guidelines made under this section is not a legislative instrument.

97 Tailored guidelines

(1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft public environment report about the relevant impacts of an action if the Minister decides that standard guidelines

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are not appropriate for the preparation of the draft report in relation to that action.

(1A) Tailored guidelines must set out requirements for the content and presentation of the draft report in relation to the action.

(2) In preparing tailored guidelines, the Minister must seek to ensure that the draft report will:

(a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and

(b) address the matters (if any) prescribed by the regulations.

(3) Tailored guidelines may also provide for the draft report to include information about other certain and likely impacts of the action if:

(a) the action is to be taken in a State or self-governing Territory; and

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft report includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

(c) the action:

(i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or

(ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(3A) Tailored guidelines may also provide for the draft report to include information about other certain and likely impacts of the action if:

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(a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and

(b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the draft report includes information about those other impacts for the purposes of deciding whether to grant the permission.

(4) Division 2 does not limit:

(a) subsection (3) or (3A); or

(b) section 98 so far as it relates to tailored guidelines prepared in reliance on that subsection.

(5) In preparing tailored guidelines, the Minister may:

(a) invite anyone to comment on a draft of tailored guidelines within a period specified by the Minister; and

(b) take account of the comments received (if any).

(6) Tailored guidelines made under this section are not a legislative instrument.

98 Designated proponent must invite comment on draft public environment report

Designated proponent's obligations

(1) The designated proponent of the action must:

(a) prepare a draft public environment report in accordance with the PER guidelines about:

(i) the relevant impacts of the action; and

(ii) if the PER guidelines are tailored guidelines that require the draft report to include information about other impacts—those other impacts; and

(ab) give the draft report to the Minister; and

(b) obtain the Minister's approval for publication of the draft report; and

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(c) publish in accordance with the regulations:
(i) the draft report; and
(ii) an invitation for anyone to give the designated proponent comments in writing relating to the draft report or the action within the period specified in the invitation.

Approval of publication of draft report

(2) The Minister may only approve the publication of the draft report if he or she is satisfied that the draft report is in accordance with the PER guidelines.

Period for comment

(3) The period specified in the invitation to comment must be the period specified in writing given by the Minister to the designated proponent. The Minister must not specify a period of less than 20 business days.

99 Finalising public environment report

(1) After the end of the period specified in the invitation to comment under section 98, the designated proponent must finalise the draft public environment report.

(2) The finalised report must:
(a) take account of any comments received within the period for comment; and
(b) contain a summary of any such comments and how those comments have been addressed.

(3) As soon as practicable after finalising the draft report, the designated proponent must give the Minister:
(a) the finalised report; and
(b) either:
(i) a copy of any comments received within the period for comment; or

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(ii) if no comments were received within that period—a written statement to that effect.

(3A) The designated proponent is taken not to have given the Minister the documents required under subsection (3) if the required fee has not been paid.

(4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised report in accordance with the regulations.

100 Recommendation report

(1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:

(a) whether the taking of the action should be approved under Part 9; and

(b) if approval is recommended, any conditions that should be attached to the approval.

(2) The recommendation report must be given to the Minister after the Minister receives the finalised public environment report under section 99 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

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Division 6—Environmental impact statements

101 Application

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by an environmental impact statement under this Division.

101A Minister must give designated proponent written guidelines for preparation of draft environmental impact statement

(1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft environmental impact statement about the relevant impacts of the action. The guidelines so given are referred to as the ***EIS guidelines***.

(2) The EIS guidelines must be:

(a) one or more sets of standard guidelines prepared under section 101B that the Minister decides are appropriate for the preparation of the draft statement in relation to the action; or

(b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft statement in relation to the action—tailored guidelines prepared under section 102.

(3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft statement in relation to the action, the Minister must seek to ensure that the draft statement, if prepared in accordance with those guidelines, will:

(a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and

(b) address the matters (if any) prescribed by the regulations.

Note: Similar considerations apply in relation to tailored guidelines: see subsection 102(2).

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(4) The Minister must give the EIS guidelines to the designated proponent:

(a) within 20 business days after the assessment approach decision was made under section 87; or

(b) if the Minister, under section 102, invites a person to comment on a draft of tailored guidelines for the preparation of the draft statement within a specified period—within 20 business days after:

(i) the end of that period; or

(ii) if there is more than one such period, the end of the later or latest of those periods.

101B Standard guidelines

(1) The Minister may prepare one or more sets of standard guidelines, in writing, for the preparation of draft environmental impact statements about the relevant impacts of actions.

Note: See also subsection 101A(3).

(2) A set of standard guidelines must set out requirements for the content and presentation of draft environmental impact statements about the relevant impacts of actions.

(3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:

(a) actions that are proposed to be taken by a specified industry sector; or

(b) actions for which a specified provision of Part 3 is a controlling provision.

(4) A set of standard guidelines made under this section is not a legislative instrument.

102 Tailored guidelines

(1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft environmental impact statement about the relevant impacts of an action if the Minister decides that standard

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guidelines are not appropriate for the preparation of the draft statement in relation to that action.

(1A) Tailored guidelines must set out requirements for the content and presentation of the draft statement in relation to the action.

(2) In preparing tailored guidelines, the Minister must seek to ensure that the draft statement will:

(a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and

(b) address any matters specified by the regulations.

(3) Tailored guidelines may also provide for the draft statement to include information about other certain and likely impacts of an action if:

(a) the action is to be taken in a State or self-governing Territory; and

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft statement includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

(c) the action:

(i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or

(ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

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(3A) Tailored guidelines may also provide for the draft statement to include information about other certain and likely impacts of an action if:

(a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and

(b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the draft statement includes information about those other impacts for the purposes of deciding whether to grant the permission.

(4) Division 2 does not limit:

(a) subsection (3) or (3A); or

(b) section 103 so far as it relates to tailored guidelines prepared in reliance on that subsection.

(5) In preparing tailored guidelines, the Minister may:

(a) invite anyone to comment on a draft of tailored guidelines within a period specified by the Minister; and

(b) take account of the comments (if any) received.

(6) Tailored guidelines made under this section are not a legislative instrument.

103 Designated proponent must invite comment on draft environmental impact statement

Designated proponent's obligations

(1) The designated proponent of the action must:

(a) prepare a draft environmental impact statement in accordance with the EIS guidelines about:

(i) the relevant impacts of the action; and

(ii) if the EIS guidelines are tailored guidelines that require the draft statement to include information about other impacts—those other impacts; and

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(ab) give the draft statement to the Minister; and

(b) obtain the Minister's approval for publication of the draft statement; and

(c) publish in accordance with the regulations:

(i) the draft statement; and

(ii) an invitation for anyone to give the designated proponent comments in writing relating to the draft statement or the action within the period specified in the invitation.

Approval of publication of draft statement

(2) The Minister may only approve the publication of the draft statement if he or she is satisfied that the draft statement is in accordance with the EIS guidelines.

Period for comment

(3) The period specified in the invitation to comment must be the period specified in writing given by the Minister to the designated proponent. The Minister must not specify a period of less than 20 business days.

104 Finalising environmental impact statement

(1) After the end of the period specified in the invitation to comment under section 103, the designated proponent must finalise the draft environmental impact statement.

(2) The finalised statement must:

(a) take account of any comments received within the period for comment; and

(b) contain a summary of any such comments and how those comments have been addressed.

(3) As soon as practicable after finalising the draft statement, the designated proponent must give the Minister:

(a) the finalised statement; and

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(b) either:
(i) a copy of any comments received within the period for comment; or
(ii) if no comments were received within that period—a written statement to that effect.

(3A) The designated proponent is taken not to have given the Minister the documents required under subsection (3) if the required fee has not been paid.

(4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised statement in accordance with the regulations.

105 Recommendation report

(1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:
(a) whether the taking of the action should be approved under Part 9; and
(b) if approval is recommended, any conditions that should be attached to the approval.

(2) The recommendation report must be given to the Minister after the Minister receives the finalised environmental impact statement under section 104 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

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Division 7—Inquiries

Subdivision A—Preliminary

106 Simplified outline

The following is a simplified outline of this Division:

> This Division provides for the Minister to appoint commissions to carry out inquiries in a flexible way into the impacts of actions.
>
> Commissioners have powers to call witnesses, obtain documents and inspect places for the purposes of their inquiries.
>
> Commissioners must report to the Minister and publish their reports.

Subdivision B—Establishment of inquiries

107 Appointing commissioners and setting terms of reference

(1) If the Minister decides that the relevant impacts of an action must be assessed by inquiry under this Division, the Minister must:

(a) appoint in writing one or more persons (the ***commissioners***) as a commission to conduct the inquiry and report to the Minister in relation to the action; and

(b) specify in writing (the ***terms of reference***):

(i) the matters relating to the action that are to be the subject of the inquiry and report; and

(ii) the period within which the commission must report to the Minister.

Note 1: The Minister may revoke an appointment and amend terms of reference. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: Subdivision E contains more provisions about the basis on which a commissioner holds office.

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(2) If the Minister appoints 2 or more commissioners for an inquiry, the Minister must appoint one of them to preside at the inquiry.

(3) In specifying in the terms of reference the matters relating to the action that are to be the subject of the inquiry and report, the Minister:

(a) must specify the relevant impacts of the action; and

(b) if subsection (4) or (4A) applies—may specify other certain or likely impacts of the action.

(4) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:

(a) the action is to be taken in a State or self-governing Territory; and

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the inquiry reports on those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

(c) the action:

(i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or

(ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: Paragraph (4)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(4A) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:

(a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and

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(b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the report includes information about those other impacts for the purposes of deciding whether to grant the permission.

(5) The Minister may also specify in the terms of reference the manner in which the commission is to carry out the inquiry.

108 Publicising inquiry

(1) As soon as practicable, the commission must publish in accordance with the regulations and in any other way it thinks fit:
(a) the terms of reference; and
(b) the information relating to the action given to the Minister under this Chapter before the Minister made the decision under Division 3 to use an inquiry to assess the relevant impacts of the action.

(2) The commission need not publish the information described in paragraph (1)(b) if, before the Minister appointed the commission, the designated proponent of the action published:
(a) a draft report under section 98 (which deals with draft public environment reports); or
(b) a draft statement under section 103 (which deals with draft environmental impact statements).
However, in this case the commission must publish as described in subsection (1) notice of the fact that the draft report or draft statement has already been published.

Subdivision C—Conduct of inquiries

109 Procedure of inquiries

(1) A commission must comply with the terms of reference in conducting its inquiry.

(2) Subject to this Division, a commission:

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(a) may determine the procedure to be followed in its inquiry; and
(b) is not subject to any directions by an employee of the Commonwealth or by a Commonwealth agency; and
(c) is not bound by the rules of evidence.

110 Inquiry to be public

(1) A hearing held as part of an inquiry must be conducted in public, except so far as the commission directs otherwise.

(2) The commission must make publicly available (in any way the commission thinks fit) the content of any submission or evidence given to the commission in writing, except so far as the commission directs otherwise.

(3) If the commission believes that it is desirable in the public interest, the commission may:
(a) give directions that all or part of the inquiry be held in private, specifying the persons who may be present; and
(b) give directions prohibiting or restricting the publication of all or specified passages of submissions or evidence given to the commission orally or in writing.

111 Calling witnesses

Summoning witnesses

(1) A commissioner may, by writing signed by the commissioner, summon a person to appear before the commission at a time and place specified in the summons to give evidence and produce any documents mentioned in the summons.

Failure of witness to attend

(2) A person served with a summons to appear as a witness at an inquiry by a commission must not:
(a) fail to attend as required by the summons; or

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(b) fail to appear and report from day to day unless excused or released from further attendance by or on behalf of the commission.

Note: A defendant bears an evidential burden in relation to the excuse or release from further attendance mentioned in paragraph (2)(b). See subsection 13.3(3) of the *Criminal Code*.

Offence

(3) A person who contravenes subsection (2) commits an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

Allowances for witnesses

(4) A person summoned by a commission to appear as a witness at an inquiry is entitled to be paid by the Commonwealth such allowances for travelling and other expenses as are prescribed by the regulations.

112 Dealing with witnesses

Power to administer oath or affirmation

(1) A commissioner may administer an oath or affirmation to a person appearing as a witness before the commission.

Note: This means that proceedings before the commission are ***judicial proceedings*** for the purposes of Part III of the *Crimes Act 1914*, which creates various offences relating to judicial proceedings.

Refusal to be sworn or to answer questions

(2) A person appearing as a witness at an inquiry by a commission must not:

(a) refuse or fail to be sworn or to make an affirmation; or

(b) refuse or fail to answer a question that the person is required to answer by the commissioner (or the commissioner presiding at the inquiry if there is more than one commissioner for the inquiry); or

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(c) refuse or fail to produce a document that the person was required to produce by a summons served on the person.

Offence

(3) A person who contravenes subsection (2) commits an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

No privilege against self-incrimination

(4) An individual is not excused from answering a question or producing a document on the ground that answering the question or producing the document would tend to incriminate the individual or to expose the individual to a penalty.

Answers and documents cannot be used in criminal proceedings

(5) However, none of the following is admissible in evidence in criminal proceedings against the individual (except proceedings under section 491):

(a) the answer to the question;

(b) the production of the document;

(c) any information, document or thing obtained as a direct or indirect consequence of answering the question or producing the document.

Sworn witnesses may also give written evidence on oath

(6) A commission may permit a person who is appearing as a witness before the commission and has been sworn or has made an affirmation to give evidence by tendering a written statement and verifying it by oath or affirmation.

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113 Dealing with documents given to commission

Inspecting and copying documents produced or given at inquiry

(1) A commissioner, or a person assisting a commission and authorised by a commissioner to do so, may:
  (a) inspect a document produced or given to the commission; and
  (b) make a copy of, or take an extract from, the document.

Keeping documents produced or given at inquiry

(2) A commission may keep for a reasonable period a document produced or given to the commission.

114 Inspections of land, buildings and places

(1) If a commissioner, or a person authorised by a commissioner, enters any land, building or place by consent as described in section 115 or under a warrant issued under section 116, the commissioner or person may:
  (a) inspect the land, building or place; and
  (b) inspect any material on the land, or on or in the building or place.

(2) However, the commissioner or authorised person may not make the inspection if:
  (a) the person occupying or in charge of the land, building or place asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and
  (b) the commissioner or person does not produce it.

(3) A person (the ***offender***) commits an offence punishable on conviction by imprisonment for not more than 6 months if:
  (a) the offender obstructs or hinders another person; and

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(b) the offender knows the other person is a commissioner, or a person authorised by a commissioner, acting under subsection (1) or a warrant issued under section 116.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(2) of the *Crimes Act 1914* lets a court that convicts an individual of an offence impose a fine instead of, or as well as, imprisonment. The maximum fine (in penalty units) the court can impose is 5 times the maximum term of imprisonment (in months).

115 Entering premises by consent

(1) A commissioner, or a person authorised by a commissioner, may enter land, a building or a place at any reasonable time for any reasonable purpose of an inquiry, if the person (the ***occupant***) occupying or in charge of the land, building or place consents.

(2) Before obtaining the consent, the commissioner or authorised person must inform the occupant that the occupant may refuse to give consent.

(3) The commissioner or authorised person may not enter the land, building or place if:

(a) the occupant asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and

(b) the commissioner or authorised person does not produce it.

(4) An entry by a commissioner or authorised person with the occupant's consent is not lawful if the occupant's consent was not voluntary.

116 Entering premises under warrant

(1) A commissioner may apply to a magistrate for a warrant authorising the commissioner or a person authorised by the commissioner to enter any land, building or place if the commissioner has reason to believe that it is necessary or desirable

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for the purposes of an inquiry for the commissioner or person to enter the land, building or place for the purposes of the inquiry.

Note: Section 117 allows applications for warrants to be made by telephone.

(2) If the magistrate is satisfied by information on oath or affirmation that the issue of the warrant is reasonably required for the purposes of the inquiry, he or she may grant a warrant authorising the person named in the warrant to enter the land, building or place for the purposes specified in the warrant.

(3) The magistrate must specify in the warrant the date after which the warrant ceases to have effect.

(4) The person named in a warrant may not enter the land, building or place if:
  (a) the person occupying or in charge of the land, building or place asks the person named in the warrant to produce his or her identity card or other written evidence of his or her identity; and
  (b) the person named in the warrant does not produce it.

117 Warrants by telephone or other electronic means

Application

(1) A commissioner may apply to a magistrate for a warrant by telephone, telex, fax or other electronic means:
  (a) in an urgent case; or
  (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

Voice communication

(2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.

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Information

(3) An application under this section must include all information required to be provided in an ordinary application for a warrant, but the application may, if necessary, be made before the information is sworn or affirmed.

Issue of warrant

(4) The magistrate may complete and sign the same form of warrant that would be issued under section 116 if, after considering the information and having received and considered any further information he or she required, the magistrate is satisfied that:
  (a) a warrant in the terms of the application should be issued urgently; or
  (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

Notification

(5) If the magistrate decides to issue the warrant, the magistrate must inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

Form of warrant

(6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

Completed form of warrant to be given to magistrate

(7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the magistrate:
  (a) the form of warrant completed by the applicant; and

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(b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.

Attachment

(8) The magistrate must attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.

Presumption

(9) If:

(a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and

(b) the form of warrant signed by the magistrate is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

118 Identity cards

(1) The Minister may cause to be issued to a commissioner or a person authorised by a commissioner an identity card:

(a) in a form approved by the Minister; and

(b) containing a recent photograph of the person to whom it is issued.

(2) As soon as practicable after the commission to which the commissioner was appointed has reported to the Minister on its inquiry, the commissioner or authorised person must return his or her identity card to the Minister.

(3) A person must not contravene subsection (2).

Penalty: 1 penalty unit.

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119 Contempt

(1) A person commits an offence punishable on conviction by a fine of not more than 30 penalty units if:

(a) the person insults, disturbs or uses insulting language towards another person; and

(b) the person knows the other person is a commissioner exercising the powers or performing the functions or duties of a commissioner.

(2) A person commits an offence punishable on conviction by a fine of not more than 30 penalty units if:

(a) the person creates a disturbance, or takes part in creating or continuing a disturbance, in or near a place; and

(b) the person knows the place is a place where a commission is holding an inquiry.

(3) A person must not:

(a) interrupt an inquiry by a commission; or

(b) do any other act or thing that would, if a commission were a court of record, constitute a contempt of that court.

Penalty: 30 penalty units.

120 Protection of commissioners and witnesses

Protection of commissioners

(1) In performing his or her duties as a commissioner, a commissioner has the same protection and immunity as a Justice of the High Court.

Rights and obligations of witnesses

(2) A person appearing before a commission as a witness at an inquiry:

(a) has the same protection as a witness in proceedings in the High Court; and

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(b) is subject to the same liabilities in any civil or criminal proceedings as such a witness (in addition to the penalties provided by this Division).

Interfering with witness is an offence

(3) A person must not:
(a) use violence to or inflict injury on; or
(b) cause or procure violence, damage, loss or disadvantage to; or
(c) cause or procure the punishment of;
another person (the ***witness***) because the witness will appear or did appear as a witness at an inquiry or because of any submission or evidence the witness gave to a commission.

Interference with a witness' employment

(4) An employer must not dismiss an employee, or prejudice an employee in his or her employment, because the employee appeared as a witness or gave any submission or evidence at an inquiry by a commission.

Interference with employee who proposes to give evidence

(5) An employer must not dismiss or threaten to dismiss an employee or prejudice, or threaten to prejudice, an employee in his or her employment, because the employee proposes to appear as a witness or to give a submission or evidence at an inquiry by a commission.

Offences

(6) A person who contravenes subsection (3), (4) or (5) commits an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

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Burden of proof in proceedings relating to witness

(7) In proceedings arising out of subsection (4), the employer has the burden of proving that the employee was not dismissed or prejudiced because the employee appeared as a witness or gave a submission or evidence at an inquiry by a commission, if it is established that:

(a) the employee was dismissed from, or prejudiced in, his or her employment; and

(b) before the employee was dismissed or prejudiced, the employee appeared as a witness, or gave any submission or evidence, at an inquiry by a commission.

Burden of proof in proceedings relating to employee proposing to give evidence

(8) In any proceedings arising out of subsection (5), the employer has the burden of proving that the employee was not dismissed, prejudiced in his or her employment or threatened with dismissal or prejudice because the employee proposed to appear as a witness or give evidence at an inquiry by a commission, if it is established that:

(a) the employee was dismissed, prejudiced or threatened; and

(b) the employee made the proposal before the employee was dismissed, prejudiced or threatened.

Relationship of subsections (3), (4) and (5)

(9) Subsections (4) and (5) do not limit subsection (3).

Subdivision D—Inquiry reports

121 Timing of report

The commission must report to the Minister on the inquiry within the period specified by the Minister in the terms of reference.

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122 Publication of report

(1) After reporting to the Minister, the commission must publish the report in accordance with the regulations.

(2) However, the commission must not publish the report so far as it sets out any submission or evidence whose publication the commission prohibited or restricted by a direction under paragraph 110(3)(b).

Subdivision E—Commissioners' terms and conditions

123 Basis of appointment

(1) A commissioner is to be appointed on a full-time basis or a part-time basis.

(2) A commissioner appointed on a full-time basis must not engage in paid employment outside the duties of the commissioner's office without the Minister's approval.

(3) A commissioner appointed on a part-time basis must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the commissioner's duties.

124 Remuneration

(1) A commissioner who is not appointed or engaged under the *Public Service Act 1999* is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, the commissioner is to be paid the remuneration that is prescribed.

(2) A commissioner is to be paid the allowances that are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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125 Leave of absence

(1) A commissioner appointed on a full-time basis has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant a commissioner appointed on a full-time basis leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) The commissioner (the ***presiding commissioner***) appointed to preside at an inquiry may grant leave of absence to any other commissioner for the inquiry on the terms and conditions that the presiding commissioner determines, if the other commissioner has been appointed on a part-time basis.

126 Resignation

A commissioner may resign his or her appointment by giving the Minister a written resignation.

127 Termination of appointment

(1) The Minister may terminate a commissioner's appointment for misbehaviour or physical or mental incapacity.

(2) The Minister must terminate the appointment of a commissioner if:

(a) the commissioner:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the commissioner fails, without reasonable excuse, to comply with section 128 (about disclosure of interests); or

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(c) the Minister becomes aware that the commissioner has a pecuniary or other interest in the subject-matter of the inquiry and the Minister considers that the commissioner should not continue to participate in the conduct of the inquiry.

(3) The Minister must terminate the appointment of a commissioner on a full-time basis if:

(a) the commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(b) the commissioner engages, except with the Minister's approval, in paid employment outside the duties of his or her office.

(4) The Minister must terminate the appointment of a commissioner on a part-time basis if:

(a) the commissioner is absent, except on leave of absence, from 3 consecutive meetings of his or her commission (if it consists of 2 or more commissioners); or

(b) the commissioner engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of his or her office.

128 Disclosure of interests

(1) A commissioner must give written notice to the Minister of all direct and indirect pecuniary interests that he or she has or acquires in a business or in a body corporate carrying on a business.

(2) If a commissioner has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties, he or she must:

(a) inform the Minister of the interest; and

(b) ensure that the interest is disclosed in the report of his or her inquiry.

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129 Other terms and conditions

A commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

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Part 9—Approval of actions

Division 1—Decisions on approval and conditions

Subdivision A—General

130 Timing of decision on approval

Basic rule

(1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.

(1A) The Minister must make the decision within the relevant period specified in subsection (1B) that relates to the controlled action, or such longer period as the Minister specifies in writing.

(1B) The ***relevant period***, in relation to a controlled action, is as follows:

(a) if the action is the subject of an assessment report—the period of 30 business days beginning on the first business day after the Minister receives the assessment report;

(b) if Division 3A of Part 8 (assessment on referral information) applies to the action—the period of 20 business days beginning on the first business day after the Minister receives the finalised recommendation report under subsection 93(5);

(c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires;

(d) if Division 5 (public environment reports) or Division 6 (environmental impact statements) of Part 8 applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the finalised public

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environment report or the finalised environmental impact statement, as the case requires;

(e) if a commission has conducted an inquiry relating to the action—the period of 40 business days beginning on the first business day after the Minister receives the report of the commission.

*What is an **assessment report**?*

(2) An ***assessment report*** is a report given to the Minister as described in:

(a) subsection 47(4) (about assessments under a bilateral agreement); or

(b) subsection 84(3) (about assessments in a manner specified in a declaration); or

(c) subsection 87(4) (about assessments by accredited assessment processes).

Notice of extension of time

(4) If the Minister specifies a longer period for the purposes of subsection (1A), he or she must:

(a) give a copy of the specification to the person proposing to take the action; and

(b) publish the specification in accordance with the regulations.

Time does not run while awaiting advice from Independent Expert Scientific Committee

(4A) If, under section 131AB, the Minister is required to obtain advice from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development before making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:

(a) on or after the day the Minister requested the advice; and

(b) on or before the day on which the Minister obtains the advice.

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Time does not run while further information is sought

(5) If, under section 132, the Minister has requested more information for the purposes of making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

131 Inviting comments from other Ministers before decision

(1) Before the Minister (the ***Environment Minister***) decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she must:

(a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action of the decision the Environment Minister proposes to make; and

(b) invite the other Minister to give the Environment Minister comments on the proposed decision within 10 business days.

(2) A Minister invited to comment may make comments that:

(a) relate to economic and social matters relating to the action; and

(b) may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

This does not limit the comments such a Minister may give.

131AA Inviting comments before decision from person proposing to take action and designated proponent

(1) Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she must:

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(a) inform the person proposing to take the action, and the designated proponent of the action (if the designated proponent is not the person proposing to take the action), of:
  (i) the decision the Minister proposes to make; and
  (ii) if the Minister proposes to approve the taking of the action—any conditions the Minister proposes to attach to the approval; and
(b) invite each person informed under paragraph (a) to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

(2) If the Minister proposes not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must provide to each person informed under paragraph (1)(a), with the invitation given under paragraph (1)(b):
(a) a copy of whichever of the following documents applies to the action:
  (i) an assessment report;
  (ii) a finalised recommendation report given to the Minister under subsection 93(5);
  (iii) a recommendation report given to the Minister under section 95C, 100 or 105; and
(b) any information relating to economic and social matters that the Minister has considered; and
(c) any information relating to the history of a person in relation to environmental matters that the Minister has considered under subsection 136(4); and
(d) a copy of any document, or part of a document, containing information of a kind referred to in paragraph 136(2)(e) that the Minister has considered.

(3) The Minister is not required to provide under subsection (2):
(a) information that is in the public domain; or
(b) a copy of so much of a document as is in the public domain; or

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(c) in the case of information referred to in paragraph (2)(b) or (c)—any conclusions or recommendations relating to that information included in documents or other material prepared by the Secretary for the Minister.

(4) The Minister must not provide under subsection (2):

(a) a copy of so much of a document as:

(i) is an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or

(ia) is a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(ii) the Minister is satisfied contains information that is commercial-in-confidence; or

(b) information that:

(i) is of such a nature that its inclusion in a document would cause that document to be an exempt document of the kind referred to in subparagraph (a)(i); or

(ii) the Minister is satisfied is commercial-in-confidence.

(5) The Minister must not be satisfied that information (including information in a document) is commercial-in-confidence unless a person demonstrates to the Minister that:

(a) release of the information would cause competitive detriment to the person; and

(b) the information is not in the public domain; and

(c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

(d) the information is not readily discoverable.

(6) In deciding whether or not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must take into account any relevant comments given to the Minister in response to an invitation given under paragraph (1)(b).

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(7) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to:

(a) the Minister's decision under section 133 whether or not to approve, for the purposes of a controlling provision, the taking of the action; and

(b) if the decision is to approve, for the purposes of a controlling provision, the taking of the action, and the Minister decides, under section 134, to attach conditions to the approval—the Minister's decision under section 134 to attach those conditions to the approval.

131AB Minister must obtain advice from Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development

(1) This section applies if:

(a) the taking of an action, for the purposes of a controlling provision, involves:

(i) unconventional gas development; or

(ii) large coal mining development; and

(b) the Minister believes that the taking of the action:

(i) is likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity; and

(ii) may have an adverse impact on a matter protected by a provision of Part 3.

(2) Before the Minister decides whether or not to approve, for the purposes of the controlling provision, the taking of the action, the Minister must obtain the advice of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development.

131A Inviting public comment before decision

Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and

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what conditions (if any) to attach to an approval, he or she may publish on the internet:

(a) the proposed decision and, if the proposed decision is to approve the taking of the action, any conditions that the Minister proposes to attach to the approval; and

(b) an invitation for anyone to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

132 Requesting further information for approval decision

If the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to approve for the purposes of a controlling provision the taking of an action, the Minister may request any of the following to provide specified information relevant to making the decision:

(a) the person proposing to take the action;

(b) the designated proponent of the action;

(c) if a commission has conducted an inquiry under Division 7 of Part 8 relating to the action—the commission;

(d) if:

(i) the action is to be taken in a State or self-governing Territory; and

(ii) a controlling provision for the action is in Division 1 of Part 3 (about matters of national environmental significance); and

(iii) the relevant impacts of the action have been assessed under a law of the State or Territory;

the appropriate Minister of that State or Territory;

(e) any other person the Minister considers appropriate.

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132A Requesting notice from appropriate State or Territory Minister about certain actions

(1) This section applies to an action that is to be taken in a State or self-governing Territory only if the action:

(a) is to be taken by a person for the purposes of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; or

(b) is to be taken by a constitutional corporation; or

(c) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: This section also applies in relation to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(2) However, this section does not apply to an action if:

(a) the action:

(i) is a nuclear action; or

(ii) is to be taken entirely in a Commonwealth marine area; or

(iii) is to be taken entirely on Commonwealth land; or

(iv) is to be taken by the Commonwealth or a Commonwealth agency; and

(b) the relevant impacts of the action have been assessed under Part 8.

(3) Before the Minister (the ***Environment Minister***) decides whether or not to approve for the purposes of a controlling provision the taking of the action, and what conditions (if any) to attach to an approval, the Environment Minister may request the appropriate Minister of the State or Territory to give the Environment Minister a notice stating the method that has been used to assess the certain and likely impacts of the action on things other than matters protected by the controlling provisions for the action.

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132B Election to have an action management plan approved after approval of the taking of an action granted

(1) A person proposing to take an action may, at any time before an approval of the taking of the action is granted under section 133, elect to submit an action management plan for approval.

(2) An election must:
  (a) be in writing; and
  (b) be given to the Minister before the Minister grants an approval under section 133.

(3) If, after making an election, the person (the ***first person***) notifies the Minister under section 156F that another person (the ***second person***) proposes to take the action instead, the second person may revoke the election made by the first person under this section.

(4) An election cannot be revoked once the Minister has granted an approval under section 133.

133 Grant of approval

Approval

(1) After receiving the assessment documentation relating to a controlled action, or the report of a commission that has conducted an inquiry relating to a controlled action, the Minister may approve for the purposes of a controlling provision the taking of the action by a person.

(1A) If the referral of the proposal to take the action included alternative proposals relating to any of the matters referred to in subsection 72(3), the Minister may approve, for the purposes of subsection (1), one or more of the alternative proposals in relation to the taking of the action.

Content of approval

(2) An approval must:

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(a) be in writing; and
(b) specify the action (including any alternative proposals approved under subsection (1A)) that may be taken; and
(c) name the person to whom the approval is granted; and
(d) specify each provision of Part 3 for which the approval has effect; and
(e) specify the period for which the approval has effect; and
(f) set out the conditions attached to the approval.

Note: The period for which the approval has effect may be extended. See Division 5.

Persons who may take action covered by approval

(2A) An approval granted under this section is an approval of the taking of the action specified in the approval by any of the following persons:
(a) the holder of the approval;
(b) a person who is authorised, permitted or requested by the holder of the approval, or by another person with the consent or agreement of the holder of the approval, to take the action.

Notice of approval

(3) The Minister must:
(a) give a copy of the approval to the person named in the approval under paragraph 133(2)(c); and
(b) provide a copy of the approval to a person who asks for it (either free or for a reasonable charge determined by the Minister).

Limit on publication of approval

(4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
(a) is:
(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

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(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in the national interest not to provide.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

Notice of refusal of approval

(7) If the Minister refuses to approve for the purposes of a controlling provision the taking of an action by the person who proposed to take the action, the Minister must give the person notice of the refusal.

Note: Under section 13 of the *Administrative Decisions (Judicial Review) Act 1977*, the person may request reasons for the refusal, and the Minister must give them.

Definition

(8) In this section:

assessment documentation, in relation to a controlled action, means:

(a) if the action is the subject of an assessment report—that report; or

(b) if Division 3A of Part 8 (assessment on referral information) applies to the action:

(i) the referral of the proposal to take the action; and

(ii) the finalised recommendation report relating to the action given to the Minister under subsection 93(5); or

(c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:

(i) the documents given to the Minister under subsection 95B(1), or the statement given to the

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Minister under subsection 95B(3), as the case requires, relating to the action; and

(ii) the recommendation report relating to the action given to the Minister under section 95C; or

(d) if Division 5 of Part 8 (public environment reports) applies to the action:

(i) the finalised public environment report relating to the action given to the Minister under section 99; and

(ii) the recommendation report relating to the action given to the Minister under section 100; or

(e) if Division 6 of Part 8 (environmental impact statements) applies to the action:

(i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and

(ii) the recommendation report relating to the action given to the Minister under section 105.

134 Conditions of approval

Condition to inform persons taking action of conditions attached to approval

(1A) An approval of the taking of an action by a person (the ***first person***) is subject to the condition that, if the first person authorises, permits or requests another person to undertake any part of the action, the first person must take all reasonable steps to ensure:

(a) that the other person is informed of any condition attached to the approval that restricts or regulates the way in which that part of the action may be taken; and

(b) that the other person complies with any such condition.

For the purposes of this Chapter, the condition imposed by this subsection is attached to the approval.

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Generally

(1) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:

(a) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or

(b) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

Conditions to protect matters from the approved action

(2) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:

(a) protecting from the action any matter protected by a provision of Part 3 for which the approval has effect; or

(b) repairing or mitigating damage that may or will be, or has been, caused by the action to any matter protected by a provision of Part 3 for which the approval has effect.

This subsection does not limit subsection (1).

Examples of kinds of conditions that may be attached

(3) The conditions that may be attached to an approval include:

(aa) conditions requiring specified activities to be undertaken for:

(i) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or

(ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage may or will be, or has been, caused by the action); and

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(ab) conditions requiring a specified financial contribution to be made to a person for the purpose of supporting activities of a kind mentioned in paragraph (aa); and

(a) conditions relating to any security to be given by the holder of the approval by bond, guarantee or cash deposit:

(i) to comply with this Act and the regulations; and

(ii) not to contravene a condition attached to the approval; and

(iii) to meet any liability of a person whose taking of the action is approved to the Commonwealth for measures taken by the Commonwealth under section 499 (which lets the Commonwealth repair and mitigate damage caused by a contravention of this Act) in relation to the action; and

(b) conditions requiring the holder of the approval to insure against any specified liability of the holder to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and

(c) conditions requiring a person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth; and

(d) conditions requiring an environmental audit of the action to be carried out periodically by a person who can be regarded as being independent from any person whose taking of the action is approved; and

(e) if an election has been made, or is taken to have been made, under section 132B in respect of the approval—conditions requiring:

(i) an action management plan to be submitted to the Minister for approval, accompanied by the fee (if any) prescribed by the regulations; and

(ii) implementation of the plan so approved; and

(f) conditions requiring specified environmental monitoring or testing to be carried out; and

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(g) conditions requiring compliance with a specified industry standard or code of practice; and

(h) conditions relating to any alternative proposals in relation to the taking of the action covered by the approval (as permitted by subsection 133(1A)).

This subsection does not limit the kinds of conditions that may be attached to an approval.

Note: Paragraph (e)—an election is taken to have been made if an approval is varied to add a condition requiring an action management plan, see subsection 143(1A).

Certain conditions require consent of holder of approval

(3A) The following kinds of condition cannot be attached to the approval of an action unless the holder of the approval has consented to the attachment of the condition:

(a) a condition referred to in paragraph (3)(aa), if the activities specified in the condition are not reasonably related to the action;

(b) a condition referred to in paragraph (3)(ab).

(3B) If the holder of the approval has given consent, for the purposes of subsection (3A), to the attachment of a condition:

(a) the holder cannot withdraw that consent after the condition has been attached to the approval; and

(b) any person to whom the approval is later transferred under section 145B is taken to have consented to the attachment of the condition, and cannot withdraw that consent.

Conditions attached under paragraph (3)(c)

(3C) A condition attached to an approval under paragraph (3)(c) may require a person taking the action to comply with conditions specified in an instrument of a kind referred to in that paragraph:

(a) as in force at a particular time; or

(b) as is in force or existing from time to time;

even if the instrument does not yet exist at the time the approval takes effect.

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Conditions attached under paragraph (3)(e)

(3D) When making a decision whether to approve an action management plan, if the Minister believes on reasonable grounds that the Minister does not have enough information to make a decision, the Minister may request the holder of the approval to provide specified information relevant to making the decision.

Considerations in deciding on condition

(4) In deciding whether to attach a condition to an approval, the Minister must consider:

(a) any relevant conditions that have been imposed, or the Minister considers are likely to be imposed, under a law of a State or self-governing Territory or another law of the Commonwealth on the taking of the action; and

(aa) information provided by the person proposing to take the action or by the designated proponent of the action; and

(b) the desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and a person taking the action to achieve the object of the condition.

Effect of conditions requiring compliance with conditions specified in another instrument

(4A) If:

(a) a condition (the ***principal condition***) attached to an approval under paragraph (3)(c) requires a person taking the action to comply with conditions (the ***other conditions***) specified in an instrument of a kind referred to in that paragraph; and

(b) the other conditions are in excess of the power conferred by subsection (1);

the principal condition is taken to require the person to comply with the other conditions only to the extent that they are not in excess of that power.

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Validity of decision

(5) A failure to consider information as required by paragraph (4)(aa) does not invalidate a decision about attaching a condition to the approval.

134A Inviting public comment before approving action management plan

(1) Before approving an action management plan, the Minister may publish:
  (a) the plan; and
  (b) an invitation for anyone to give the Minister, within 11 business days, written comments on the plan.

(2) The regulations may provide for requirements relating to the way the Minister must publish the plan and invitation to comment.

135 Certain approvals and conditions must not give preference

(1) This section deals with the approval:
  (a) for the purposes of section 21 or 22A of a nuclear action:
    (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
    (ii) by a constitutional corporation; or
  (b) for the purposes of section 25 of an action that is prescribed for the purposes of subsection 25(1) and is taken:
    (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
    (ii) by a constitutional corporation.

(2) The Minister must not grant the approval, or attach a condition to the approval, that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

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135A Publication of recommendation reports

(1) This section applies in relation to the following reports:

(a) a finalised recommendation report given to the Minister under subsection 93(5);

(b) a recommendation report given to the Minister under section 95C, 100 or 105.

(2) Subject to subsections (3) and (4), the Secretary must provide a copy of a report to which this section applies to a person who asks for it (either at no charge or at a reasonable charge determined by the Secretary).

(3) The Secretary is not required to provide a copy of the report under subsection (2) to anyone until after the Minister has decided, for the purposes of each controlling provision, whether or not to approve the taking of the action concerned.

(4) The Secretary may refuse to provide, under subsection (2), a copy of so much of the report as:

(a) is:

(i) an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or

(ii) a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Secretary is satisfied is commercial-in-confidence.

(5) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:

(a) release of the information in that part would cause competitive detriment to the person; and

(b) the information in that part is not in the public domain; and

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(c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

(d) the information in that part is not readily discoverable.

Subdivision B—Considerations for approvals and conditions

136 General considerations

Mandatory considerations

(1) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Subdivision:

(a) matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action;

(b) economic and social matters.

Factors to be taken into account

(2) In considering those matters, the Minister must take into account:

(a) the principles of ecologically sustainable development; and

(b) the assessment report (if any) relating to the action; and

(ba) if Division 3A of Part 8 (assessment on referral information) applies to the action—the finalised recommendation report relating to the action given to the Minister under subsection 93(5); and

(bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:

(i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and

(ii) the recommendation report relating to the action given to the Minister under section 95C; and

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(c) if Division 5 (public environment reports) of Part 8 applies to the action:
  (i) the finalised public environment report relating to the action given to the Minister under section 99; and
  (ii) the recommendation report relating to the action given to the Minister under section 100; and

(ca) if Division 6 (environmental impact statements) of Part 8 applies to the action:
  (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
  (ii) the recommendation report relating to the action given to the Minister under section 105; and

(d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action—the report of the commissioners; and

(e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and

(f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and

(fa) any relevant advice obtained by the Minister from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development in accordance with section 131AB; and

(g) if a notice relating to the action was given to the Minister under subsection 132A(3)—the information in the notice.

Note: The Minister must also take into account any relevant comments given to the Minister in response to an invitation under paragraph 131AA(1)(b). See subsection 131AA(6).

Person's environmental history

(4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister

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may consider whether the person is a suitable person to be granted an approval, having regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

(c) if the person is a body corporate that is a subsidiary of another body or company (the ***parent body***)—the history in relation to environmental matters of the parent body and its executive officers.

Minister not to consider other matters

(5) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must not consider any matters that the Minister is not required or permitted by this Division to consider.

137 Requirements for decisions about World Heritage

In deciding whether or not to approve, for the purposes of section 12 or 15A, the taking of an action and what conditions to attach to such an approval, the Minister must not act inconsistently with:

(a) Australia's obligations under the World Heritage Convention; or

(b) the Australian World Heritage management principles; or

(c) a plan that has been prepared for the management of a declared World Heritage property under section 316 or as described in section 321.

137A Requirements for decisions about National Heritage places

In deciding whether or not to approve for the purposes of section 15B or 15C the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:

(a) the National Heritage management principles; or

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(b) an agreement to which the Commonwealth is party in relation to a National Heritage place; or

(c) a plan that has been prepared for the management of a National Heritage place under section 324S or as described in section 324X.

138 Requirements for decisions about Ramsar wetlands

In deciding whether or not to approve for the purposes of section 16 or 17B the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention.

139 Requirements for decisions about threatened species and endangered communities

(1) In deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES; or

(b) a recovery plan or threat abatement plan.

(2) If:

(a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and

(b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;

the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.

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140 Requirements for decisions about migratory species

In deciding whether or not to approve for the purposes of section 20 or 20A the taking of an action relating to a listed migratory species, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under whichever of the following conventions and agreements because of which the species is listed:

(a) the Bonn Convention;
(b) CAMBA;
(c) JAMBA;
(d) an international agreement approved under subsection 209(4).

140A No approval for certain nuclear installations

(1) The Minister must not approve an action consisting of or involving the construction or operation of any of the following nuclear installations:

(a) a nuclear fuel fabrication plant;
(b) a nuclear power plant;
(c) an enrichment plant;
(d) a reprocessing facility.

(2) Paragraph (1)(b) does not apply to a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.

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Division 2—Requirement to comply with conditions

142 Compliance with conditions on approval

(1) A person whose taking of an action has been approved under this Part must not contravene any condition attached to the approval.

Civil penalty:

(a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;

(b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.

(1A) Subsection (1) does not apply to a person who is not the holder of the approval if:

(a) the person was not informed of the condition; and

(b) the person could not reasonably have been expected to be aware of the condition.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

(2) A contravention of a condition attached to an approval under this Part does not invalidate the approval.

142A Offence of breaching conditions on approval

(1) A person whose taking of an action has been approved under this Part commits an offence if:

(a) the person takes an action or omits to take an action; and

(b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and

(c) the action or omission results or will result in a significant impact on a matter protected by a provision of Part 3.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) Strict liability applies to paragraph (1)(c).

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Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) A person whose taking of an action has been approved under this Part commits an offence if:

(a) the person takes an action or omits to take an action; and

(b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and

(c) the action or omission is likely to have a significant impact on a matter protected by a provision of Part 3 and the person is reckless as to that fact.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(4) An offence against subsection (1) or (3) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

142B Strict liability offence for breach of approval condition

(1) A person whose taking of an action has been approved under this Part commits an offence if:

(a) the person takes an action or omits to take an action; and

(b) the action or omission contravenes a condition attached to the approval.

Penalty: 60 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

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Note 3: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 4: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(2) Subsection (1) does not apply to a person who is not the holder of the approval if:

(a) the person was not informed of the condition; and

(b) the person could not reasonably have been expected to be aware of the condition.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

(3) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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Division 3—Variation of conditions and suspension and revocation of approvals

143 Variation of conditions attached to approval

(1) The Minister may, by written instrument, revoke, vary or add to any conditions (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if:

(a) any condition attached to the approval has been contravened; or

(b) both of the following conditions are satisfied:

(i) the action has had a significant impact that was not identified in assessing the action on any matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;

(ii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or

(ba) all of the following conditions are satisfied:

(i) the action has had a significant impact on a matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;

(ii) the Minister is satisfied that the impact is substantially greater than the impact that was identified in assessing the action;

(iii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or

(c) the holder of the approval agrees to the proposed revocation, variation or addition, or the Minister has extended the period for which the approval has effect under section 145D, and the Minister is satisfied that any conditions attached to the approval after the proposed revocation, variation or addition are necessary or convenient for:

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(i) protecting a matter protected by any provision of Part 3 for which the approval has effect; or

(ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

(1A) If, under paragraph (1)(c), the holder of an approval agrees to conditions mentioned in paragraph 134(3)(e) (about an action management plan) being added and attached to the approval, the holder is taken to have made an election under section 132B before the approval was granted.

(1B) The holder of an approval may request the Minister, in writing, to vary a condition attached to an approval of an action.

(2) The Minister may, by written instrument, revoke any condition (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if the Minister is satisfied that the condition is not needed to protect any matter protected by a provision of Part 3 for which the approval has effect.

(3) In deciding whether or not to revoke, vary or add to any conditions attached to the approval of the taking of an action by a person, the Minister may have regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

(c) if the person is a body corporate that is a subsidiary of another body or company (the ***parent body***)—the history in relation to environmental matters of the parent body and its executive officers.

(4) The revocation, variation or addition takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.

(5) As soon as possible after making the instrument, the Minister must:

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(a) give a copy of it to the holder of the approval; and
(b) publish the instrument in accordance with the regulations.

Note: If the holder is not satisfied with changed conditions attached to the approval of the holder's action, he or she can ask the Minister to reverse the change by making another change to the conditions under this section.

(6) However, the Minister must not publish so much of the instrument as:
(a) is:
(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or
(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
(b) the Minister believes it is in the national interest not to publish.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

143A Variation of action management plan

Written application required

(1) If an action management plan is a condition of an approval of an action, the holder of the approval may, at any time, apply to the Minister for a variation of the action management plan.

(2) An application for a variation must be:
(a) in writing; and
(b) accompanied by:
(i) any information or documents required by the regulations; and
(ii) the application fee (if any) prescribed by the regulations.

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Minister may approve a variation of action management plan

(3) The Minister may approve a variation to an action management plan if requested to do so.

(4) When making a decision whether to vary an action management plan, if the Minister believes on reasonable grounds that the application does not include enough information, the Minister may request the applicant to provide specified information relevant to making the decision.

(5) If the holder of an approval applies for a variation of an action management plan, the Minister must notify the person, in writing, of the Minister's decision.

144 Suspension of approval

(1) The Minister may, by written instrument, suspend the effect of an approval under this Part for the purposes of a specified provision of Part 3 for a specified period (which must not start before the day on which the instrument is made) if the Minister believes on reasonable grounds that:

(a) a significant impact on the matter protected by the provision has occurred because of the contravention of a condition attached to the approval; or

(b) the conditions specified in subsection (2) are satisfied.

(2) The conditions are that:

(a) the action has had, or the Minister believes that the action will have, a significant impact that was not identified in assessing the action on a matter protected by a provision of Part 3 for which the approval has effect; and

(b) the approval would not have been granted if information that the Minister has about that impact had been available when the decision to approve the action was made.

(2A) The Minister may, by written instrument, suspend the effect of an approval under this Part for the purposes of a specified provision of

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Part 3 for a specified period (which must not start before the day on which the instrument is made) if:

(a) either:

(i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or

(ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within a particular time—the Minister believes on reasonable grounds that the thing has not been done within that time; and

(b) the Minister is satisfied that:

(i) the approval would not have been granted without that condition being attached; or

(ii) because of the failure to comply with the requirement, the suspension is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.

(3) In deciding whether or not to suspend an approval of the taking of an action by a person, the Minister may have regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

(c) if the person is a body corporate that is a subsidiary of another body or company (the ***parent body***)—the history in relation to environmental matters of the parent body and its executive officers.

(4) During the specified period, the specified provision of Part 3 applies as if the Minister had not given the approval.

(5) As soon as possible after making the instrument, the Minister must:

(a) give a copy of it to the holder of the approval; and

(b) publish the instrument in accordance with the regulations.

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145 Revocation of approval

(1) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:

(a) a significant impact on the matter protected by the provision has occurred because of the contravention of a condition attached to the approval; or

(b) the conditions specified in subsection (2) are satisfied.

(2) The conditions are that:

(a) the action has had, or the Minister believes that the action will have, a significant impact that was not identified in assessing the action on a matter protected by a provision of Part 3 for which the approval has effect; and

(b) the approval would not have been granted if information that the Minister has about that impact had been available when the decision to approve the action was made.

(2A) The Minister may, by written instrument, revoke an approval under this Part of an action for the purposes of a specified provision of Part 3 if he or she believes that:

(a) the impacts that the action has had, will have or is likely to have were not accurately identified in information available to the Minister when the approval was given; and

(b) the information did not accurately identify those impacts because of negligence or a deliberate act or omission by the person proposing to take the action or the designated proponent of the action.

(2B) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:

(a) either:

(i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or

(ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within a particular time—the Minister believes on reasonable

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grounds that the thing has not been done within that time; and

(b) the Minister is satisfied that:

(i) the approval would not have been granted without that condition being attached; or

(ii) because of the failure to comply with the requirement, the revocation is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.

(3) In deciding whether or not to revoke an approval of the taking of an action by a person, the Minister may have regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

(c) if the person is a body corporate that is a subsidiary of another body or company (the ***parent body***)—the history in relation to environmental matters of the parent body and its executive officers.

(4) The revocation takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.

(5) As soon as possible after making the instrument, the Minister must:

(a) give a copy of it to the person who was the holder of the approval; and

(b) publish the instrument in accordance with the regulations.

145A Reinstating suspended or revoked approval

Application

(1) This section applies if the Minister has, by written instrument:

(a) suspended an approval under this Part of the taking of an action by a person; or

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(b) revoked an approval under this Part of the taking of an action by a person.

Requesting reinstatement of approval

(2) Within 2 months after receiving a copy of the instrument under this Division, the person who was the holder of the approval may request the Minister to reinstate the approval.

Deciding whether to reinstate approval

(3) Within 20 business days of receiving the request, the Minister must decide whether or not to reinstate the approval.

Considerations for decision

(4) Subdivision B of Division 1 applies to the decision whether or not to reinstate the approval in the same way as it applies to a decision whether or not to approve the taking of an action.

Extra time for decision

(5) A day is not to be counted for the purposes of subsection (3) if:
(a) the Minister and the person who was the holder of the approval agree in writing that it should not be counted; or
(b) the Minister has requested the person to provide information under subsection (6) and the day is on or before the day on which the Minister receives the last of the information requested.

Requesting information for decision

(6) If the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to reinstate the approval, the Minister may request the person who was the holder of the approval to provide specified information relevant to making the decision.

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Reversal of decision to suspend or revoke approval

(7) If the Minister decides to reinstate the approval, it and any conditions attached to it immediately before the suspension or revocation have effect on and after the day of the decision (subject to any future suspension or revocation under this Division).

Notice of decision about reversal

(8) The Minister must:
  (a) give the person who was the holder of the approval written notice of the Minister's decision; and
  (b) publish notice of the decision in accordance with the regulations.

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Division 4—Transfer of approvals

145B Transfer with Minister's consent

Transfer by written agreement

(1) A person (the ***transferor***) who is the holder of an approval under this Part for the purposes of a provision of Part 3 may transfer the approval to another person (the ***transferee***) by written agreement, subject to the Minister's consent.

Transfer ineffective until Minister consents

(2) The transfer does not have effect for the purposes of this Act until the Minister consents in writing to the transfer. To avoid doubt, the Minister's consent to a transfer cannot take effect before the Minister gives the consent.

Effect of consent

(3) If the Minister consents to the transfer:
  (a) this Act (except Division 3) operates in relation to the transferor as if the Minister had revoked the approval when the Minister's consent took effect; and
  (b) this Act operates in relation to the transferee as if, when the Minister's consent to the transfer took effect, he or she:
    (i) had approved under this Part for the purposes of the provision of Part 3 the taking of the action by the transferee; and
    (ii) had attached to the approval the conditions that were attached to the approval of the taking of the action by the transferor.

Considerations in deciding whether to consent

(4) In deciding whether or not to consent to the transfer, the Minister may consider:

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(a) whether the transferee would be a suitable person to be granted the approval, having regard to:

(i) the transferee's history in relation to environmental matters; and

(ii) if the transferee is a body corporate—the history of its executive officers in relation to environmental matters; and

(iii) if the transferee is a body corporate that is a subsidiary of another body or company (the ***parent body***)—the history in relation to environmental matters of the parent body and its executive officers; and

(b) whether the transferee can comply with the conditions attached to the approval.

Giving copies of consents to transferor and transferee

(5) The Minister must give the transferor and the transferee a copy of the consent each.

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Division 5—Extension of period of effect of approval

145C Application to Minister to extend period of effect of approval

(1) Subject to subsection (2), the holder of an approval under this Part may apply, in writing, to the Minister to extend the period (the ***approval period***) for which the approval has effect.

(2) Subsection (1) does not apply if:
  (a) the approval has been suspended or revoked under this Part and has not been reinstated; or
  (b) the approval has otherwise ceased to have effect.

(3) An application under subsection (1) must include the information (if any) prescribed by the regulations.

145D Minister must decide whether or not to extend approval period

(1) Within 20 business days after receiving an application under subsection 145C(1), the Minister must decide, in writing, whether or not to extend the approval period.

Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 145E.

(2) The Minister may decide to extend the approval period only if the Minister is satisfied that the extension will not result in a substantial increase in, or substantial change in the nature of, the adverse impacts (if any) the action:
  (a) has or will have; or
  (b) is likely to have;

on the matter protected by each provision of Part 3 for which the approval has effect.

(3) In considering the matter referred to in subsection (2), the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Division:

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(a) matters relevant to any matter protected by a provision of Part 3 for which the approval has effect;
(b) economic and social matters.

(4) As soon as possible after deciding whether or not to extend the approval period, the Minister must:
(a) give a copy of the decision to the holder of the approval; and
(b) if the decision is to extend the approval period—publish the decision in accordance with the regulations.

145E Minister may request further information for making decision

(1) If the Minister believes on reasonable grounds that he or she does not have enough information to decide whether or not to extend the approval period, the Minister may request the holder of the approval to provide specified information relevant to making the decision.

(2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the purposes of subsection 145D(1) if it is:
(a) on or after the day the Minister requested the information; and
(b) on or before the day on which the Minister receives the last of the information requested.

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Part 10—Strategic assessments

Division 1—Strategic assessments generally

Subdivision A—Assessment of actions to be taken in accordance with policy, plan or program

146 Minister may agree on strategic assessment

(1) The Minister may agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3.

(1A) The agreement may also provide for the assessment of other certain and likely impacts of actions under the policy, plan or program if:

(a) the actions are to be taken in a State or self-governing Territory; and

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the assessment deal with those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the actions; and

(c) the actions:

(i) are to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or

(ii) are actions whose regulation is appropriate and adapted to give effect to Australia's obligation under an agreement with one or more other countries.

Note: Paragraph (1A)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(1B) The agreement must provide for:

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(a) the preparation of terms of reference for a report on the impacts to which the agreement relates; or

(b) all of the following:

(i) the preparation of draft terms of reference for a report on the impacts to which the agreement relates;

(ii) the publication of the draft terms of reference for public comment for a period of at least 28 days that is specified by the Minister;

(iii) the finalisation of the terms of reference, to the Minister's satisfaction, taking into account the comments (if any) received on the draft terms of reference.

(2) The agreement must provide for:

(a) the preparation of a draft of a report on the impacts to which the agreement relates; and

(b) the publication of the draft report for public comment for a period of at least 28 days that is specified by the Minister; and

(c) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and

(d) the provision of the report to the Minister; and

(e) the making of recommendations by the Minister to the person about the policy, plan or program (including recommendations for modification of the policy, plan or program); and

(f) the endorsement of the policy, plan or program by the Minister if he or she is satisfied that:

(i) the report adequately addresses the impacts to which the agreement relates; and

(ii) either the recommended modifications of the policy, plan or program (if any) have been made or any modifications having the same effect have been made; and

(g) any other matter prescribed by the regulations.

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Note 1: If the impacts of actions under a policy, plan or program are assessed under an agreement under this Part, the Minister may decide on a less onerous approach for an assessment relating to an individual action under the policy, plan or program. See section 87.

Note 2: If the Minister endorses a policy, plan or program embodied in a management arrangement or an authorisation process, the Minister may declare under section 33, or make a bilateral agreement declaring, that actions approved in accordance with the management arrangement or authorisation process do not need approval for the purposes of a specified provision of Part 3.

(3) If the agreement relates to actions to be taken in a State or self-governing Territory, the Minister must tell the appropriate Minister of the State or Territory:

(a) that the agreement has been made; and

(b) what those actions are (in general terms).

Subdivision B—Approval of taking of actions in accordance with endorsed policy, plan or program

146A Definition

In this Subdivision and Subdivision C:

endorsed policy, plan or program means a policy, plan or program that has been endorsed by the Minister in accordance with an agreement as mentioned in paragraph 146(2)(f).

146B Minister may approve taking of actions in accordance with endorsed policy, plan or program

(1) Subject to Subdivision C, the Minister may approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

Note: Subdivision C sets out matters that the Minister must take into account in deciding whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

(2) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program must:

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(a) be in writing; and
(b) specify the action or class of actions that may be taken in accordance with the endorsed policy, plan or program; and
(c) specify each provision of Part 3 for which the approval has effect; and
(d) specify the period for which the approval has effect; and
(e) set out the conditions attached to the approval.

(2A) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program may specify the person or persons who may take the action or an action in the class of actions.

(3) The Minister must:
(a) give a copy of the approval to the person responsible for the adoption or implementation of the endorsed policy, plan or program; and
(b) provide a copy of the approval to a person who asks for it (either at no charge or for a reasonable charge determined by the Minister).

(4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
(a) is:
(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets); or
(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
(b) the Minister believes it is in the national interest not to provide.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

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(5) An approval given under subsection (1) is not a legislative instrument.

146C Inviting comments from other Ministers before deciding whether or not to approve taking of actions in accordance with endorsed policy, plan or program

(1) Before the Minister (the ***Environment Minister***) decides whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program, he or she must:

(a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action or class of actions of the decision the Environment Minister proposes to make; and

(b) invite each Minister informed to give the Environment Minister, within 10 business days, comments on the proposed decision.

(2) A Minister who is invited to comment may make comments:

(a) that relate to economic and social matters relating to the action or class of actions to which the proposed decision relates; and

(b) that may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

This does not limit the comments such a Minister may give.

146D Effect of approval of taking of actions in accordance with endorsed policy, plan or program

(1) If an approval under section 146B is in force, the following provisions have effect:

(a) the Minister is taken to have decided under Division 2 of Part 7 that:

(i) each action specified in the approval under paragraph 146B(2)(b), or each action in a class of

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actions specified in the approval under that paragraph, is a controlled action; and

(ii) each provision of Part 3 specified in the approval under paragraph 146B(2)(c) is a controlling provision for each such controlled action;

(b) the Minister is taken to have approved under Part 9, for the purposes of each controlling provision for each controlled action, the taking of the action by any of the following:

(i) the person or persons (if any) specified in the approval under subsection 146B(2A) as the person or persons who may take the action;

(ii) any other person who may take the action in accordance with the endorsed policy, plan or program.

(2) Parts 7 and 8 and paragraph 170A(c) do not apply in relation to an action if an approval of the taking of the action, or an approval of the taking of a class of actions that includes the action, in accordance with an endorsed policy, plan or program is in force under section 146B.

(3) Subject to subsection (4), section 134 and Divisions 2, 3 and 4 of Part 9 apply in relation to an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b).

Note: Section 134 deals with conditions of approvals, Division 2 of Part 9 deals with compliance with conditions, Division 3 of Part 9 deals with variation of conditions and suspension and revocation of approvals and Division 4 of Part 9 deals with transfer of approvals.

(4) Subsection 145A(4) applies in relation to a decision whether or not to reinstate an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b), as if:

(a) the reference to Subdivision B of Division 1 of Part 9 were a reference to Subdivision C of this Division; and

(b) the reference to a decision whether or not to approve the taking of an action were a reference to a decision whether or not to approve, under this Subdivision, the taking of an action in accordance with an endorsed policy, plan or program.

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Subdivision C—Considerations for approving taking of actions in accordance with endorsed policy, plan or program

146E Minister must comply with this Subdivision

The Minister must comply with this Subdivision in deciding:

(a) whether or not to approve, under section 146B, the taking of an action or a class of actions in accordance with an endorsed policy, plan or program; and

(b) in the case of a decision to approve the taking of such an action or class of actions, what conditions (if any) to attach to the approval.

Note: For the meaning of ***endorsed policy, plan or program***, see section 146A.

146F General considerations

(1) The Minister must consider the following, so far as they are not inconsistent with any other requirements of this Subdivision:

(a) matters relevant to any matter protected by a provision of Part 3 that the Minister considers is relevant to the approval;

(b) economic and social matters.

(2) In considering those matters, the Minister must take into account the principles of ecologically sustainable development.

146G Approvals relating to declared World Heritage properties

If the approval relates to a declared World Heritage property, the Minister must not act inconsistently with:

(a) Australia's obligations under the World Heritage Convention; or

(b) the Australian World Heritage management principles; or

(c) a plan that has been prepared for the management of the declared World Heritage property under section 316 or as described in section 321.

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146H Approvals relating to National Heritage places

If the approval relates to a National Heritage place, the Minister must not act inconsistently with:

(a) the National Heritage management principles; or

(b) an agreement to which the Commonwealth is party in relation to the National Heritage place; or

(c) a plan that has been prepared for the management of the National Heritage place under section 324S or as described in section 324X.

146J Approvals relating to declared Ramsar wetlands

If the approval relates to a declared Ramsar wetland, the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention.

146K Approvals relating to listed threatened species and ecological communities

(1) This section applies if the approval relates to a listed threatened species or a listed threatened ecological community.

(2) The Minister must not act inconsistently with:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES; or

(b) a recovery plan for the species or community or a threat abatement plan.

(3) The Minister must have regard to any approved conservation advice for the species or community.

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146L Approvals relating to listed migratory species

If the approval relates to a listed migratory species, the Minister must not act inconsistently with whichever of the following conventions or agreements because of which the species is listed:

(a) the Bonn Convention;

(b) CAMBA;

(c) JAMBA;

(d) an international agreement approved under subsection 209(4).

146M No approvals relating to nuclear actions

(1) The Minister must not approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program if the action, or an action in the class of actions, consists of, or involves the construction or operation of, any of the following nuclear installations:

(a) a nuclear fuel fabrication plant;

(b) a nuclear power plant;

(c) an enrichment plant;

(d) a reprocessing facility.

(2) Paragraph (1)(b) does not apply to a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.

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Division 2—Assessment of Commonwealth-managed fisheries

147 Simplified outline of this Division

The following is a simplified outline of this Division:

The Australian Fisheries Management Authority must make agreements under Division 1 for the assessment of actions in fisheries managed under the *Fisheries Management Act 1991*. An agreement must be made whenever it is proposed to make a management plan or a determination not to have a plan. An agreement must be made within 5 years of the commencement of this Act for all fisheries that did not have plans at that commencement.

The Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under Division 1 for the assessment of actions permitted by policies or plans for managing fishing in Torres Strait. All policies or plans must be covered by an agreement within 5 years after the commencement of this Act.

A further agreement for assessment must be made if the impact of the actions is significantly greater than assessed under an earlier agreement.

If the Minister endorses a policy or plan assessed under an agreement under Division 1, the Minister must make a declaration that actions under the policy or plan do not need approval under Part 9 for the purposes of section 23 or 24A (which protect the marine environment).

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148 Assessment before management plan is determined

Plans under the Fisheries Management Act 1991

(1) Before the Australian Fisheries Management Authority determines a plan of management for a fishery under section 17 of the *Fisheries Management Act 1991*, the Authority must:

(a) make an agreement with the Minister under section 146 for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and

(b) consider any recommendations made by the Minister under the agreement.

Plans under the Torres Strait Fisheries Act 1984

(2) Before the Minister administering the *Torres Strait Fisheries Act 1984* determines a plan of management for a fishery under section 15A of that Act, he or she must:

(a) make an agreement under section 146 with the Minister (the ***Environment Minister***) administering this section for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and

(b) consider any recommendations made by the Environment Minister under the agreement.

149 Assessment before determination that no plan required

Before the Australian Fisheries Management Authority determines under subsection 17(1A) of the *Fisheries Management Act 1991* that a plan of management is not warranted for a fishery, the Authority must:

(a) make an agreement with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions permitted under the Authority's policy for managing the fishery; and

(b) consider any recommendations made by the Minister under the agreement.

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150 Assessment of all fisheries without plans must be started within 5 years

Fisheries managed under the Fisheries Management Act 1991

(1) This section applies to fisheries (as defined in the *Fisheries Management Act 1991*):

(a) that are managed under that Act (whether as a result of arrangements under section 71 or 72 of that Act or not); and

(b) for which there were not plans of management in force under that Act when this Act commenced.

Two-thirds of fisheries to be covered by agreements in 3 years

(2) Before the day that is the third anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing at least $^{2}/_{3}$ of the fisheries.

All fisheries to be covered by agreements in 5 years

(3) Before the day that is the fifth anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing the fisheries.

Agreement not needed if fishery already subject to agreement

(4) However, subsection (3) does not require another agreement to be made in relation to a fishery if an agreement relating to the fishery has been made, before the day mentioned in that subsection, by the Authority and the Minister under section 146 because of subsection 148(1) or section 149.

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151 Assessment of all Torres Strait fisheries to be started within 5 years

Fisheries managed under the Torres Strait Fisheries Act 1984

(1) This section applies to actions that:
  (a) are involved in fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act); and
  (b) were not covered by a plan of management in force under section 15A of that Act when this Act commenced.

Policies for all actions to be covered by agreements in 5 years

(2) Before the day that is the fifth anniversary of this Act commencing, the Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under section 146 with the Minister administering this section for assessment of the impacts of the actions on each matter protected by a provision of Part 3, being actions that are permitted by policies under that Act.

Agreement not needed if fishery already subject to agreement

(3) However, subsection (2) does not require another agreement to be made in relation to actions if an agreement covering them has been made under section 146, before the day mentioned in that subsection, by the Ministers mentioned in that subsection because of subsection 148(2).

152 Further assessment if impacts greater than previously assessed

Application

(1) This section applies if the Minister (the ***Environment Minister***) and the Minister administering the *Fisheries Management Act 1991* agree that the impacts that actions:
  (a) included in a fishery managed under that Act; or

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(b) permitted under a policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act);

have, will have or are likely to have on a matter protected by a provision of Part 3 are significantly greater than the impacts identified in the most recent report provided to the Environment Minister under an agreement made under section 146 relating to the fishery, policy or plan.

Further assessment for management arrangements under the Fisheries Management Act 1991

(2) The Australian Fisheries Management Authority must make another agreement with the Minister under section 146 in relation to the Authority's policy for managing the fishery.

Further assessment for policy or plan for Torres Strait fishing

(3) The Minister administering the *Torres Strait Fisheries Act 1984* must make another agreement under section 146 in relation to the policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act).

153 Minister must make declaration if he or she endorses plan or policy

(1) This section applies if:

(a) the Minister makes an agreement under section 146 as required by this Division and endorses under the agreement:

(i) a plan of management under the *Fisheries Management Act 1991* for a fishery; or

(ii) policies of the Australian Fisheries Management Authority for managing a fishery for which there is not a plan of management under the *Fisheries Management Act 1991*; or

(iii) a plan of management under the *Torres Strait Fisheries Act 1984* for a fishery; or

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(iv) policies for managing fishing under the *Torres Strait Fisheries Act 1984*; and

(b) the Minister accredits, under subsection 33(3) of this Act, as an accredited arrangement a management plan or regime consisting of the endorsed plan or policies.

(2) The Minister must make a declaration under section 33 that actions approved in accordance with the accredited arrangement do not require an approval under Part 9 for the purposes of subsection 23(1), (2) or (3) or subsection 24A(1), (2), (3), (4), (5) or (6).

Note: The declaration and accreditation will allow actions that would otherwise be prohibited by sections 23 and 24A to be taken without approval if they are taken in accordance with the accredited arrangement. See section 32.

154 This Division does not limit Division 1

This Division does not limit Division 1.

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Part 11—Miscellaneous rules about assessments and approvals

Division 1—Rules about timing

155 This Chapter ceases to apply to lapsed proposals

(1) If:

(a) a person who proposes to take a controlled action or is the designated proponent of an action is required or requested under this Chapter to do something; and

(b) the person does not do the thing within a period that the Minister believes is a reasonable period;

the Minister may give the person a written notice inviting the person to satisfy the Minister within a specified reasonable period that assessment of the action should continue or that the Minister should make a decision about approving the action.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* explain how documents may be served and when they are taken to be served.

(2) If, by the end of the specified period, the person fails to satisfy the Minister that assessment of the action should continue or that the Minister should make a decision about approving the action, the Minister may declare in writing that this Chapter no longer applies to the action.

(3) This Chapter (apart from this section) ceases to apply in relation to the action on the date specified in the declaration. The Minister must not specify a date earlier than the date of making of the declaration.

(4) The Minister must:

(a) give a copy of the declaration to the person and to the Secretary; and

(b) publish the declaration in accordance with the regulations.

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156 General rules about time limits

(1) If this Chapter specifies a time limit in business days in relation to a controlled action (or an action that the Minister believes may be or is a controlled action), the limit is to be worked out by reference to what is a business day in the place where the action is to be taken.

(2) A day is not to be counted as a business day for the purposes of subsection (1) if it is not a business day in all the places in which the action is to be taken.

(3) Failure to comply with a time limit set in this Chapter does not affect the validity of:

(a) a decision under this Chapter; or

(b) an assessment or approval under this Chapter.

Note: The Minister must make a statement to Parliament about some failures to comply with time limits. See section 518.

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Division 1A—Variation of proposals to take actions

156A Request to vary proposal to take an action

(1) If:

(a) a proposal (the ***original proposal***) by a person to take an action has been referred to the Minister under Division 1 of Part 7; and

(b) after the referral is made, the person wishes to change the original proposal;

the person may, subject to subsection (2), request the Minister to accept a variation (a ***varied proposal***) of the original proposal.

(2) Subsection (1) does not apply if:

(a) the Minister has made a decision under section 74A to not accept the referral of the original proposal; or

(b) the Minister has made a decision under section 75 that the proposed action is not a controlled action; or

(c) a particular manner for taking the proposed action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action; or

(d) the Minister has made a decision under section 133 approving or refusing to approve the taking of the proposed action; or

(e) the referral of the original proposal has been withdrawn under section 170C.

(3) A request under subsection (1) must:

(a) be made in a way prescribed by the regulations; and

(b) include the information prescribed by the regulations.

(4) If a request is made under subsection (1), any provisions of this Chapter that would, apart from this subsection, have applied in relation to the original proposal cease to apply to that proposal.

Note: Provisions that have ceased to apply in relation to the original proposal under subsection (4) will start to apply to that proposal, or to

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the varied proposal, after the Minister has decided whether or not to accept the varied proposal. See section 156D.

156B Minister must decide whether or not to accept a varied proposal

(1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal.

Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C.

(2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. This subsection does not limit the matters the Minister may consider in deciding whether or not to accept the varied proposal.

(3) In considering, for the purposes of subsection (2), whether or not the character of the varied proposal is substantially the same as the character of the original proposal, the Minister must have regard to the change (if any) in:

(a) the nature of the activities proposed to be carried out in taking the action; and

(b) the nature and extent of the impacts (if any) the action:

(i) has or will have; or

(ii) is likely to have;

on the matter protected by each provision of Part 3.

156C Minister may request further information in relation to a varied proposal

(1) If the Minister believes on reasonable grounds that a request under subsection 156A(1) to accept a varied proposal to take an action does not include enough information for the Minister to decide whether or not to accept the varied proposal, the Minister may

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request the person proposing to take the action to provide specified information relevant to making the decision.

(2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the purposes of subsection 156B(1) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

156D Effect of Minister's decision to accept or not accept a varied proposal

(1) If the Minister decides to accept a varied proposal to take an action:

(a) any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to the varied proposal; and

(b) for the purpose of the application of those provisions, anything done in relation to the original proposal is taken to have been done in relation to the varied proposal.

(2) If the Minister decides not to accept a varied proposal to take an action, any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to that proposal.

(3) For the purpose of the application of the provisions of this Chapter in relation to the varied proposal under subsection (1), or in relation to the original proposal under subsection (2), a day is not to be counted as a business day if it is:

(a) on or after the day the Minister received the request under subsection 156A(1) to accept the varied proposal; and

(b) on or before the day the Minister made the decision under subsection 156B(1).

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156E Notice of decision

(1) Within 10 business days after deciding under subsection 156B(1) whether or not to accept a varied proposal to take an action, the Minister must give written notice of the decision to:

(a) the person proposing to take the action; and

(b) the designated proponent of the action (if the designated proponent of the action is not the person proposing to take the action).

(2) If:

(a) the request to accept the varied proposal related to an action that is to be taken in a State or self-governing Territory; and

(b) a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance); and

(c) the Minister decided to accept the varied proposal;

the Minister must also, within the period referred to in subsection (1), give written notice of the decision to the appropriate Minister of the State or Territory.

(3) If the Minister decided to accept the varied proposal, the Minister must, within the period referred to in subsection (1), publish the request to accept the varied proposal and notice of the decision in accordance with the regulations.

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Division 1B—Change of person proposing to take action

156F Change of person proposing to take action

Notice of change of person proposing to take action

(1) At any time:

(a) after a proposal by a person to take an action has been referred to the Minister under Division 1 of Part 7; and

(b) before the Minister has approved, or refused to approve, the taking of the action under section 133;

the person (the ***first person***) proposing to take the action and another person (the ***second person***) may notify the Minister, in writing, that:

(c) the first person no longer proposes to take the action; and

(d) the second person proposes to take the action instead.

Note: A person who is the holder of an approval under Part 9 may transfer the approval to another person under section 145B.

When notice cannot be given

(2) Subsection (1) does not apply if:

(a) the Minister has made a decision under section 74A to not accept the referral of the proposal to take the action; or

(b) the Minister has made a decision under section 75 that the action is not a controlled action; or

(c) a particular manner for taking the action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action.

Requirements for notice

(3) A notice must:

(a) include the information (if any) prescribed by the regulations; and

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(b) be accompanied by the fee (if any) prescribed by the regulations.

Effect of notice

(4) If a notice is given to the Minister under subsection (1):

(a) any provisions of this Chapter that, apart from this paragraph, would have applied to the first person in relation to the action cease to apply to that person and start to apply to the second person; and

(b) for the purposes of the application of those provisions:

(i) the second person is taken to be named in the referral of the proposal to take the action as the person proposing to take the action; and

(ii) the second person is taken to have done anything the first person did in relation to the action; and

(iii) anything done in relation to the first person in relation to the action is taken to have been done in relation to the second person.

Publication of notice

(5) Within 10 business days after receiving a notice under subsection (1), the Minister must publish a copy of the notice in accordance with the regulations.

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Division 2—Actions in area offshore from a State or the Northern Territory

157 Actions treated as though they were in a State or the Northern Territory

(1) A provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a State also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the State by section 4 of the *Coastal Waters (State Title) Act 1980*.

(2) So far as a provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a self-governing Territory relates to the Northern Territory, the provision also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*.

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Division 3—Exemptions

158 Exemptions from Part 3 and this Chapter

(1) A person proposing to take a controlled action, or the designated proponent of an action, may apply in writing to the Minister for an exemption from a specified provision of Part 3 or of this Chapter.

(2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.

(3) The Minister may, by written notice, exempt a specified person from the application of a specified provision of Part 3 or of this Chapter in relation to a specified action.

(4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.

(5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates. This does not limit the matters the Minister may consider.

(6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.

(7) Within 10 business days after making the notice, the Minister must:

(a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations; and

(b) give a copy of the notice to the person specified in the notice.

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Division 3A—Approval process decisions not affected by listing events that happen after section 75 decision made

158A Approval process decisions not affected by listing events that happen after section 75 decision made

(1) In this section:

approval process decision means any of the following decisions:

(a) a decision under section 75 whether an action is a controlled action;

(b) a decision under section 75 whether a provision of Part 3 is a controlling provision for an action;

(c) a decision under section 78 in relation to a decision referred to in paragraph (a) or (b) of this definition;

(d) a decision under section 87 on the approach for the assessment of the impacts of an action;

(e) a decision under section 133 whether to approve an action;

(f) a decision under section 134 to attach conditions to an approval of an action;

(g) a decision under section 143 to revoke, vary or add to conditions attached to an approval of an action;

(h) any other decision made under a provision of this Chapter that is specified in the regulations.

listing event means any of the following events:

(a) a property becoming a declared World Heritage property;

(b) a change in the world heritage values of a declared World Heritage property;

(c) a place becoming a National Heritage place;

(d) a change in the National Heritage values included in the National Heritage List for a National Heritage place;

(e) a place becoming a Commonwealth Heritage place;

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(f) a change in the Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place;
(g) a wetland becoming a declared Ramsar wetland;
(h) a change in the boundaries of any of the following:
(i) a World Heritage property;
(ii) a National Heritage place;
(iii) a Commonwealth Heritage place;
(iv) a declared Ramsar wetland;
(v) the Great Barrier Reef Marine Park;
(i) a species becoming a listed threatened species;
(j) an ecological community becoming a listed threatened ecological community;
(k) a listed threatened species or a listed threatened ecological community becoming listed in another category representing a higher degree of endangerment;
(l) a species becoming a listed migratory species;
(m) any other event of a kind specified in the regulations.

(2) This section applies if:
(a) the Minister has, before or after the commencement of this section, decided under section 75 (the ***primary decision***) whether an action (the ***relevant action***) is a controlled action (whether the decision is that the action is a controlled action, or that the action is not a controlled action); and
(b) at a time that is after the commencement of this section and after the primary decision was made, a listing event occurs.

(3) The validity of the primary decision, or any other approval process decision made in relation to the relevant action before the listing event occurred, is not affected by the listing event, nor can it be revoked, varied, suspended, challenged, reviewed, set aside or called in question because of, or for reasons relating to, the listing event.

(4) After the listing event occurs, the listing event is to be disregarded:

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(a) in making any further approval process decision in relation to the relevant action; and

(b) in doing anything under this Chapter, in relation to the relevant action, because of the making of an approval process decision in relation to the relevant action (whether that approval process decision is or was made before or after the listing event occurred).

(5) This section has effect despite any other provision of this Act and despite any other law.

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Division 4—Application of Chapter to actions that are not controlled actions

Subdivision A—Minister's advice on authorising actions

159 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

A Commonwealth agency or employee must consider advice from the Minister before authorising one of the following actions with a significant impact on the environment:

(a) providing foreign aid;
(b) managing aircraft operations in airspace;
(c) adopting or implementing a major development plan for an airport;
(d) an action prescribed by the regulations.

The agency or employee must inform the Minister of the proposal to authorise the action.

The environmental impacts of the action must be assessed in accordance with a declaration made by the Minister accrediting a Commonwealth assessment process, or by one of the following methods chosen by the Minister:

(a) a specially accredited process;
(aa) an assessment on referral information under Division 3A;
(b) an assessment on preliminary documentation under Division 4 of Part 8;
(c) a public environment report under Division 5 of Part 8;
(d) an environmental impact statement under Division 6 of Part 8;
(e) an inquiry under Division 7 of Part 8.

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The Minister must give the agency or employee advice on protecting the environment from the action, within 30 days of receiving the report of the assessment.

160 Requirement to take account of Minister's advice

Requirement

(1) Before a Commonwealth agency or employee of the Commonwealth gives an authorisation (however described) of an action described in subsection (2), the agency or employee must obtain and consider advice from the Minister in accordance with this Subdivision.

Note: The giving of an authorisation for an action may be constituted by the renewal of an authorisation of the action or the variation of an authorisation for a different action.

Minister may decide advice is not required

(1A) Subsection (1) does not apply in relation to an authorisation of an action if:

(a) the agency or employee has referred a proposal to give the authorisation to the Minister under subsection 161(1); and

(b) the Minister has decided under subsection 161A(1) that this Subdivision does not apply in relation to the referral or the action.

Relevant actions

(2) Subsection (1) applies in relation to:

(a) the entry by the Commonwealth, under Australia's foreign aid program, into a contract, agreement or arrangement for the implementation of a project that has, will have or is likely to have a significant impact on the environment anywhere in the world; and

(b) the adoption or implementation of a plan for aviation airspace management involving aircraft operations that have,

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will have or are likely to have a significant impact on the environment; and

(c) the adoption or implementation of a major development plan (as defined in the *Airports Act 1996*); and

(d) any other action prescribed by the regulations for the purposes of this paragraph.

(2A) Regulations may prescribe an action for the purposes of paragraph (2)(d):

(a) partly by reference to the action's having, or being likely to have, a significant impact on the environment; or

(b) partly by reference to a specified person believing that the action has, will have or is likely to have a significant impact on the environment; or

(c) wholly or partly by reference to legislation under which the authorisation of the action is to be granted.

This does not limit the ways in which regulations may prescribe an action.

This section does not apply to actions like those already assessed

(3) Subsection (1) does not apply in relation to a particular authorisation (the ***later authorisation***) if the agency or employee has complied with, or is complying with, this Subdivision in relation to another authorisation or proposed authorisation and is satisfied of one or both of the matters in subsection (4).

Which actions are like actions?

(4) For the purposes of subsection (3), the agency or employee must be satisfied that:

(a) the Minister's advice relating to the other authorisation deals or will deal with all the impacts that the action to which the later authorisation relates has, will have or is likely to have on the environment; or

(b) the impacts that the action to which the later authorisation relates has, will have or is likely to have on the environment:

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(i) are an extension of the corresponding impacts of the action to which the other authorisation relates; and

(ii) are not significantly different in nature from those corresponding impacts; and

(iii) do not significantly add to those corresponding impacts.

State law excluded in relation to aviation

(5) A law of a State or Territory does not apply in relation to the assessment of the certain or likely environmental impacts of an action described in paragraph (2)(b) if subsection (1) applies in relation to authorisation of the action, or would apply apart from subsection (3).

161 Seeking the Minister's advice

Requirement for referral

(1) If a Commonwealth agency or employee of the Commonwealth proposing to give an authorisation (however described) of an action thinks the agency or employee is required by section 160 (disregarding subsection 160(1A)) to obtain and consider the Minister's advice before giving the authorisation, the agency or employee must:

(a) refer the proposal to the Minister; and

(b) nominate a person to act as designated proponent of the action.

Minister may request referral

(2) The Minister may request a Commonwealth agency or employee of the Commonwealth to:

(a) refer to the Minister a proposal to give an authorisation (however described) of an action; and

(b) nominate a person to act as designated proponent of the action;

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if the Minister thinks the agency or employee is required by section 160 (disregarding subsection 160(1A)) to obtain and consider the Minister's advice before giving the authorisation.

Complying with Minister's request

(3) The Commonwealth agency or employee must comply with the Minister's request.

Content of referral

(4) A referral must include the information prescribed by the regulations.

161A Minister may decide that advice is not required

(1) If:

(a) the Minister receives a referral under subsection 161(1) of a proposal by a Commonwealth agency or employee of the Commonwealth to give an authorisation of an action; and

(b) the Minister is satisfied, on the basis of the information in the referral, that the action does not have, will not have or is not likely to have a significant impact on the environment;

the Minister may decide, in writing, that this Subdivision does not apply in relation to the referral or the action.

(2) If the Minister decides that this Subdivision does not apply in relation to the referral or the action, this Act (other than Divisions 2 and 3 of Part 7) applies as if the Minister had decided under Division 2 of Part 7 that the action is not a controlled action.

(3) If the Minister decides that this Subdivision does not apply in relation to the referral or the action, the Minister must:

(a) give written notice of the decision to the agency or employee who referred the proposal to give an authorisation of the action; and

(b) publish notice of the decision in accordance with the regulations.

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161B Certain provisions of other Acts not to apply if Minister decides that advice is not required

(1) This section applies in relation to a provision of another Act that is expressed to apply if:

(a) the advice of the Minister is sought under this Subdivision in relation to a proposal to give an authorisation (however described) of an action; or

(b) a proposal to give an authorisation (however described) of an action is referred to the Minister under this Subdivision.

(2) The provision does not apply in relation to an action if:

(a) a proposal to give an authorisation (however described) of the action has been referred to the Minister under section 161; and

(b) the Minister has decided under section 161A that this Subdivision does not apply in relation to the referral or the action.

Note: See, for example, subsections 94(6A) and 95(3A) of the *Airports Act 1996*.

162 Assessment of the action

Part 8 (except sections 82, 83 and 84) and the other provisions of this Act (so far as they relate to that Part) apply in relation to the action proposed to be authorised as if:

(a) the referral of the proposal to give the authorisation were a referral of a proposal to take the action; and

(b) the Minister had decided under Division 2 of Part 7 that the action was a controlled action when the proposal to give the authorisation was referred to the Minister; and

(c) the person nominated to act as the designated proponent had been designated as the proponent of the action by the Minister under section 75; and

(d) a reference in Part 8 or those provisions to the relevant impacts of the action were a reference to the impact that the

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action has, will have or is likely to have on the environment; and

(e) a reference in Part 8 or those provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to giving informed advice about the proposal to give an authorisation of the action.

163 Providing advice

(1) The Minister must give advice on the following matters to the Commonwealth agency or employee of the Commonwealth who referred the proposal to give an authorisation of the action:

(a) whether the agency or employee should give the authorisation;

(b) what conditions (if any) should be attached to the authorisation (if possible) to protect the environment;

(c) any other matter relating to protection of the environment from the action.

(2) The Minister must give the advice within 30 business days of receiving:

(a) a report mentioned in subsection 84(3) relating to the action; or

(aa) a finalised recommendation report under Division 3A of Part 8 (as applied by section 162) relating to the action; or

(ab) the documents given to the Minister under subsection 95B(1) (as applied by section 162), or the statement given to the Minister under subsection 95B(3) (as applied by section 162), as the case requires, relating to the action; or

(ac) a finalised public environment report under Division 5 of Part 8 (as applied by section 162) relating to the action; or

(ad) a finalised environmental impact statement under Division 6 of Part 8 (as applied by section 162) relating to the action; or

(b) a report of an inquiry under Division 7 of Part 8 (as applied by section 162) relating to the action.

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164 Reporting on response to advice

As soon as practicable after considering the Minister's advice, the Commonwealth agency or employee of the Commonwealth must give the Minister a report stating:

(a) what action has been taken in relation to the Minister's advice; and

(b) if the agency or employee did not give effect to some or all of the Minister's advice—why the agency or employee did not do so.

Subdivision C—Assessment under agreement with State or Territory

166 This Subdivision applies if Ministers agree it should

(1) This Subdivision applies if the Minister and a Minister of a State or self-governing Territory agree that it should apply in relation to an action that:

(a) is to be taken in the State or Territory by a constitutional corporation; or

(b) if the agreement is with a Minister of a Territory—is to be taken in the Territory; or

(c) is to be taken in the State or Territory by a person for the purposes of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; or

(d) is to be taken in the State or Territory and is an action whose assessment under this Subdivision is an appropriate means of giving effect to Australia's obligations under an agreement with one or more other countries.

(2) This section applies to the adoption or implementation of a policy, plan or program in the same way as it applies to any other action.

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(3) Despite subsection (1), this Subdivision does not apply in relation to an action to be taken in 2 or more States or self-governing Territories unless there is an agreement between the Minister and a Minister of each of those States and Territories that this Subdivision should apply in relation to the action.

167 Making an agreement

Power to make agreement

(1) The Minister may make a written agreement with a Minister of a State or self-governing Territory to apply this Subdivision in relation to an action to be taken in the State or Territory.

Prerequisites for making agreement

(2) The Minister may agree only if he or she is satisfied that the action is not a controlled action.

Minister must not make an agreement that gives preference

(3) The Minister must not enter into an agreement that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:
  (a) by a constitutional corporation; or
  (b) by a person for the purposes of trade or commerce between Australia and another country or between 2 States.

168 Content of an agreement

Generally

(1) An agreement to apply this Subdivision in relation to an action must:
  (a) specify that one of the following is to apply in relation to the action:
    (i) Division 3A of Part 8;

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(ii) Division 4 of Part 8;
(iii) Division 5 of Part 8;
(iv) Division 6 of Part 8;
(v) Division 7 of Part 8;
(vi) Subdivision A of Division 1 of Part 10; and

(b) if it specifies that Division 3A, 4, 5 or 6 of Part 8 is to apply in relation to the action—specify the person who is taken to be the designated proponent of the action for the purposes of that Division.

Agreement applying Division 5 of Part 8

(3) An agreement that specifies that Division 5 of Part 8 (about public environment reports) is to apply in relation to an action may deal with how the Minister will exercise his or her power:

(a) under section 97 to prepare tailored guidelines for the preparation of a draft report; or

(b) under section 98 to approve publication of a draft report or specify a period for comment.

Agreement applying Division 6 of Part 8

(4) An agreement that specifies that Division 6 of Part 8 (about environmental impact statements) is to apply in relation to an action may deal with how the Minister will exercise his or her power:

(a) under section 102 to prepare tailored guidelines for the preparation of a draft statement; or

(b) under section 103 to approve publication of a draft statement or specify a period for comment.

Agreement applying Division 7 of Part 8

(5) An agreement that specifies that Division 7 of Part 8 (about inquiries) is to apply in relation to an action may deal with how the Minister will exercise his or her power under section 107:

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(a) to appoint one or more persons as commissioners, and to appoint a person to preside; or
(b) to specify the matters relating to the action that are to be the subject of the inquiry and report; or
(c) to specify the time within which the commission must report to the Minister; or
(d) to specify the manner in which the commission is to carry out the inquiry.

Agreement applying Part 10

(6) An agreement that specifies that Subdivision A of Division 1 of Part 10 is to apply may:
(a) be in the same document as an agreement mentioned in that Subdivision; or
(b) specify the manner in which an agreement the Minister makes under that Subdivision is to provide for matters that that Subdivision requires that agreement to provide for.

169 Application of a Division of Part 8

Provisions that apply

(1) If the agreement states that a particular Division of Part 8 is to apply in relation to the assessment of an action, the following provisions of this Act (the ***applied provisions***) apply in relation to the action as set out in subsection (2):
(a) that Division;
(b) the other provisions of this Act (except Part 9), so far as they relate to that Division.

Modification of applied provisions

(2) The applied provisions apply in relation to the action as if:
(a) the Minister had decided under Division 2 of Part 7 that the action was a controlled action; and

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(b) the Minister had decided that the relevant impacts of the action must be assessed under the Division specified in the agreement applying the Division; and

(c) the person specified in the agreement as the person who is taken to be the designated proponent of the action for the purposes of that Division had been designated as the proponent of the action by the Minister under section 75; and

(d) a reference in the applied provisions to the relevant impacts of the action were a reference to the impact that the action has, will have or is likely to have on the environment; and

(e) a reference in the applied provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to making an informed report and recommendations relating to the action.

Modification of Division 4 of Part 8

(3) Also, if the agreement states that Division 4 of Part 8 is to apply in relation to the action, that Division applies in relation to the action as if paragraphs 95(2)(a) and (b) and 95A(3)(a), (b) and (c) merely referred to specified information relating to the action.

Minister must give copy of report to State or Territory Minister

(4) The Minister must give a copy of the report he or she receives from the Secretary or commission of inquiry under the applied provisions in relation to the action to each Minister of a State or Territory who is party to the agreement.

170 Application of Subdivision A of Division 1 of Part 10

If an agreement to apply this Subdivision states that Subdivision A of Division 1 of Part 10 is to apply:

(a) that Subdivision applies as if:

(i) the reference in subsection 146(1) to relevant impacts of actions were a reference to the impacts the actions have, will have or are likely to have on the environment; and

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(ii) paragraph 146(2)(f) were omitted; and

(b) the Minister must give a copy of the report provided to the Minister under the agreement made under section 146, and of any recommendations made by the Minister under the agreement, to each Minister of a State or Territory who is party to the agreement to apply this Subdivision.

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Division 5—Publication of information relating to assessments

170A Publication of information relating to assessments

The Secretary must publish on the internet every week notice of the following:

(a) the publication in the immediately preceding week by the Minister under section 45 of a notice of the Minister's intention to develop a draft bilateral agreement;

(b) each referral (if any) of an action received by the Minister under Division 1 of Part 7 in the immediately preceding week;

(c) each decision (if any) in the immediately preceding week under Division 2 of Part 7 that an action is a controlled action;

(d) each decision (if any) in the immediately preceding week under Division 3 of Part 8 about which approach is to be used for assessment of the relevant impacts of an action;

(da) each draft recommendation report and invitation (if any) published in the immediately preceding week under Division 3A of Part 8 (about assessment on referral information);

(e) the information and invitations (if any) published in the immediately preceding week under Division 4 of Part 8 (about assessment on preliminary documentation);

(f) each set of guidelines (if any) prepared in the immediately preceding week by the Minister under Division 5 or 6 of Part 8 for a report or statement;

(g) each public invitation (if any) issued in the immediately preceding week by the Minister to comment on a draft of guidelines under Division 5 or 6 of Part 8 for a report or statement;

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(h) each draft or finalised report or statement published in the immediately preceding week under Division 5 or 6 of Part 8 by a designated proponent;

(i) each finalised recommendation report given to the Minister under Division 3A of Part 8 in the immediately preceding week;

(ia) each recommendation report given to the Minister in the immediately preceding week under section 95C, 100 or 105;

(j) any other matter prescribed by the regulations.

170B Information critical to protecting matters of national environmental significance not to be disclosed

(1) The Minister may, by notice in writing to a person, direct the person not to disclose specified information when publishing a document or material as required or permitted by a specified provision of this Chapter, if the Minister considers that the information is critical to the protection of a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance).

(2) A provision of this Chapter that is specified in a direction under subsection (1) has effect as if it did not require or permit the publication of the information specified in the direction.

(3) A person who is given a direction under subsection (1) must not contravene the direction.

Civil penalty: 100 penalty units.

170BA Designated proponent may request Minister to permit commercial-in-confidence information not to be disclosed

(1) This section applies in relation to the assessment documentation that must be published by the designated proponent of an action to which Division 4, 5 or 6 of Part 8 applies.

(2) The designated proponent may request the Minister, in writing, to permit the designated proponent not to publish so much of the

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assessment documentation relating to the action as the designated proponent considers is commercial-in-confidence.

(3) A request under subsection (2) must include the information prescribed by the regulations.

(4) If the Minister is satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence, the Minister may, by written notice to the designated proponent, permit the designated proponent not to publish that part of the assessment documentation.

(5) The Minister must not be satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence unless a person demonstrates to the Minister that:
  (a) release of the information in that part would cause competitive detriment to the person; and
  (b) the information in that part is not in the public domain; and
  (c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
  (d) the information in that part is not readily discoverable.

(6) If the Minister permits the designated proponent not to publish a part of the assessment documentation that the Minister considers is commercial-in-confidence, the provision of Division 4, 5 or 6 of Part 8 that requires the designated proponent to publish the assessment documentation has effect as if it did not require the publication of that part of the assessment documentation.

(7) In this section:

assessment documentation, in relation to an action to which Division 4, 5 or 6 of Part 8 applies, means:
  (a) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
    (i) the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires; and

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(ii) the document prepared under paragraph 95B(1)(a) or the information referred to in subsection 95B(4), as the case requires; or

(b) if Division 5 of Part 8 (public environment reports) applies to the action:

(i) the draft public environment report relating to the action given to the Minister under paragraph 98(1)(ab); and

(ii) the finalised public environment report relating to the action given to the Minister under section 99; or

(c) if Division 6 of Part 8 (environmental impact statements) applies to the action:

(i) the draft environmental impact statement relating to the action given to the Minister under paragraph 103(1)(ab); and

(ii) the finalised environmental impact statement relating to the action given to the Minister under section 104.

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Division 6—Withdrawal of referrals

170C Withdrawal of referral of proposal to take an action

(1) Subject to subsection (2), a person who:

(a) has referred a proposal to take an action to the Minister under section 68; or

(b) is named as the person proposing to take an action in a proposal that is referred to the Minister under section 69 or 71;

may withdraw the referral, by written notice to the Minister.

(2) The referral cannot be withdrawn after the Minister has decided, under Part 9, whether or not to approve the taking of the action.

(3) If the Minister receives a notice withdrawing the referral, the Minister must publish notice of the withdrawal of the referral in accordance with the regulations.

(4) If the referral is withdrawn, the provisions of this Chapter that would, apart from this subsection, have applied to the action cease to apply to the action.

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Division 7—Miscellaneous

170CA Fees

(1) The Minister may, in writing, determine the amounts of fees that may be charged if the approach for assessing the relevant impacts of an action that the Minister has decided is a controlled action is:
  (a) assessment by inquiry under Division 7 of Part 8; or
  (b) assessment by strategic assessment under Division 1 of Part 10.

(2) Before making a determination, the Minister must consult:
  (a) the person proposing to take the action; or
  (b) if the person proposing to take the action is not the designated proponent—the designated proponent; or
  (c) if the approach is assessment by strategic assessment—the person responsible for the adoption or implementation of the relevant policy, plan or program;

about the amounts of fees to be charged.

(3) The Minister may, in the determination made under subsection (1), determine the way in which a fee is to be worked out.

(4) A determination made under subsection (1) is not a legislative instrument.

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Chapter 5—Conservation of biodiversity and heritage

Part 11A—Interpretation

170D References to business days are references to Canberra business days

A reference in this Chapter to a business day is a reference to a day that is a business day in Canberra.

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Part 12—Identifying and monitoring biodiversity and making bioregional plans

Division 1—Identifying and monitoring biodiversity

171 Identifying and monitoring biodiversity

(1) The Minister may, on behalf of the Commonwealth, co-operate with, and give financial or other assistance to, any person for the purpose of identifying and monitoring components of biodiversity.

(2) Without limiting subsection (1), the co-operation and assistance may include co-operation and assistance in relation to all or any of the following:

(a) identifying and monitoring components of biodiversity that are important for its conservation and ecologically sustainable use;

(b) identifying components of biodiversity that are inadequately understood;

(c) collecting and analysing information about the conservation status of components of biodiversity;

(d) collecting and analysing information about processes or activities that are likely to have a significant impact on the conservation and ecologically sustainable use of biodiversity;

(e) assessing strategies and techniques for the conservation and ecologically sustainable use of biodiversity;

(f) systematically determining biodiversity conservation needs and priorities.

(3) In this Act:

components of biodiversity includes species, habitats, ecological communities, genes, ecosystems and ecological processes.

(4) For the purposes of this section, the components of biological diversity that are important for its conservation and ecologically

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sustainable use are to be identified having regard to the matters set out in Annex I to the Biodiversity Convention.

(5) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

172 Inventories of listed threatened species etc. on Commonwealth land

(1) The Minister may prepare an inventory covering an area of Commonwealth land that identifies, and states the abundance of, the listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species on the area of land if:

(a) the Minister is satisfied that the area of land is of importance for the conservation of biodiversity; and

(b) the area of land is not covered by a plan that:

(i) has an object (whether express or implied) of either protecting the environment or promoting the conservation of biodiversity; and

(ii) is in force under a law of the Commonwealth.

(2) A Commonwealth agency must provide all reasonable assistance in connection with the preparation of an inventory if:

(a) the inventory is to cover an area of Commonwealth land; and

(b) the agency has an interest in the area of land.

(3) For the purposes of paragraph (2)(b), a Commonwealth agency has an interest in an area of Commonwealth land if the agency:

(a) has a legal or equitable interest in the area; or

(b) occupies the area; or

(c) has administrative responsibilities relating to the area or to actions taken in the area.

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173 Surveys of cetaceans, listed threatened species etc. in Commonwealth marine areas

(1) The Minister may prepare a survey covering a Commonwealth marine area that identifies, and states the extent of the range of, cetaceans, listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species in the area if:

(a) the Minister is satisfied that the area is of importance for the conservation of biodiversity; and

(b) the area is not covered by a plan that:

(i) has an object (whether express or implied) of either protecting the environment or promoting the conservation of biodiversity; and

(ii) is in force under a law of the Commonwealth.

(2) A Commonwealth agency must provide all reasonable assistance in connection with the preparation of a survey if:

(a) the survey is to cover a Commonwealth marine area; and

(b) the agency has an interest in the area.

(3) For the purposes of paragraph (2)(b), a Commonwealth agency has an interest in a Commonwealth marine area if the agency:

(a) has a legal or equitable interest in the area; or

(b) occupies the area; or

(c) has administrative responsibilities relating to the area or to actions taken in the area.

174 Inventories and surveys to be updated

The Minister must take reasonable steps to ensure that the inventories and surveys prepared under this Division are maintained in an up-to-date form.

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Division 2—Bioregional plans

176 Bioregional plans

(1) The Minister may prepare a bioregional plan for a bioregion that is within a Commonwealth area. In preparing the plan, the Minister must carry out public consultation on a draft of the plan in accordance with the regulations.

(2) The Minister may, on behalf of the Commonwealth, co-operate with a State or a self-governing Territory, an agency of a State or of a self-governing Territory, or any other person in the preparation of a bioregional plan for a bioregion that is not wholly within a Commonwealth area.

(3) The co-operation may include giving financial or other assistance.

(4) A bioregional plan may include provisions about all or any of the following:

(a) the components of biodiversity, their distribution and conservation status;

(b) important economic and social values;

(ba) heritage values of places;

(c) objectives relating to biodiversity and other values;

(d) priorities, strategies and actions to achieve the objectives;

(e) mechanisms for community involvement in implementing the plan;

(f) measures for monitoring and reviewing the plan.

(4A) A bioregional plan prepared under subsection (1) or (2) is not a legislative instrument.

(5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.

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177 Obligations under this Act unaffected by lack of bioregional plans

Obligations imposed by this Act are not affected, in their application in relation to Commonwealth areas, by a lack of bioregional plans for those areas.

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Part 13—Species and communities

Division 1—Listed threatened species and ecological communities

Subdivision A—Listing

178 Listing of threatened species

(1) The Minister must, by legislative instrument, establish a list of threatened species divided into the following categories:
  (a) extinct;
  (b) extinct in the wild;
  (c) critically endangered;
  (d) endangered;
  (e) vulnerable;
  (f) conservation dependent.

(2) The list, as first established, must contain only the species contained in Schedule 1 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.

(3) The Minister must include:
  (a) in the extinct category of the list, as first established, only the species mentioned in subsection (2) that were listed as presumed extinct; and
  (b) in the endangered category of the list, as first established, only the native species mentioned in subsection (2) that were listed as endangered; and
  (c) in the vulnerable category of the list, as first established, only the species mentioned in subsection (2) that were listed as vulnerable.

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(4) If the Minister is satisfied that a species included in the list, as first established, in:

(a) the extinct category; or

(b) the endangered category; or

(c) the vulnerable category;

is not eligible to be included in that or any other category, or is eligible to be, or under subsection 186(3), (4) or (5) can be, included in another category, the Minister must, within 6 months after the commencement of this Act, amend the list accordingly in accordance with this Subdivision.

179 Categories of threatened species

(1) A native species is eligible to be included in the ***extinct*** category at a particular time if, at that time, there is no reasonable doubt that the last member of the species has died.

(2) A native species is eligible to be included in the ***extinct in the wild*** category at a particular time if, at that time:

(a) it is known only to survive in cultivation, in captivity or as a naturalised population well outside its past range; or

(b) it has not been recorded in its known and/or expected habitat, at appropriate seasons, anywhere in its past range, despite exhaustive surveys over a time frame appropriate to its life cycle and form.

(3) A native species is eligible to be included in the ***critically endangered*** category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.

(4) A native species is eligible to be included in the ***endangered*** category at a particular time if, at that time:

(a) it is not critically endangered; and

(b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.

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(5) A native species is eligible to be included in the ***vulnerable*** category at a particular time if, at that time:

(a) it is not critically endangered or endangered; and

(b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.

(6) A native species is eligible to be included in the ***conservation dependent*** category at a particular time if, at that time:

(a) the species is the focus of a specific conservation program the cessation of which would result in the species becoming vulnerable, endangered or critically endangered; or

(b) the following subparagraphs are satisfied:

(i) the species is a species of fish;

(ii) the species is the focus of a plan of management that provides for management actions necessary to stop the decline of, and support the recovery of, the species so that its chances of long term survival in nature are maximised;

(iii) the plan of management is in force under a law of the Commonwealth or of a State or Territory;

(iv) cessation of the plan of management would adversely affect the conservation status of the species.

(7) In subsection (6):

fish includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

180 Native species of marine fish

(1) A native species of marine fish is eligible to be included in a category mentioned in a paragraph of subsection 178(1) at a particular time if, at that time, the species meets the prescribed criteria for that category.

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(2) A subsection of section 179 referring to a category (the ***relevant category***) does not apply to a native species of marine fish if regulations are in force for the purposes of subsection (1) of this section prescribing criteria for the relevant category.

181 Listing of threatened ecological communities

(1) The Minister must, by legislative instrument, establish a list of threatened ecological communities divided into the following categories:
  (a) critically endangered;
  (b) endangered;
  (c) vulnerable.

(2) Subject to subsection (3), the Minister must not include an ecological community in a particular category of the list, as first established, unless satisfied that the ecological community is eligible to be included in that category when the list is first published.

(3) The list, as first established, must contain only the ecological communities listed in Schedule 2 to the *Endangered Species Protection Act 1992* immediately before the commencement of this Act, and they must be listed in the endangered category.

(4) If the Minister is satisfied that an ecological community included in the endangered category of the list, as first established under subsection (3), is not eligible to be included in that or any other category, or is eligible to be included in another category, the Minister must, within 6 months after the commencement of this Act, amend the list accordingly in accordance with this Subdivision.

(5) To avoid doubt, the instrument first establishing the list under subsection (1) is not taken to have been a legislative instrument.

Note: When the list was first established, it was required to be established by instrument published in the Gazette.

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182 Critically endangered, endangered and vulnerable communities

(1) An ecological community is eligible to be included in the ***critically endangered*** category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.

(2) An ecological community is eligible to be included in the ***endangered*** category at a particular time if, at that time:
  (a) it is not critically endangered; and
  (b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.

(3) An ecological community is eligible to be included in the ***vulnerable*** category at a particular time if, at that time:
  (a) it is not critically endangered nor endangered; and
  (b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.

183 Listing of key threatening processes

(1) The Minister must, by legislative instrument, establish a list of threatening processes that are key threatening processes.

(2) The list, as first established, must contain only the key threatening processes contained in Schedule 3 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.

184 Minister may amend lists

Subject to this Subdivision, the Minister may, by legislative instrument, amend a list referred to in section 178, 181 or 183 by:
  (a) including items in the list in accordance with Subdivision AA; or

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(aa) including items in the list in accordance with subsection 186(3), (4) or (5); or

(b) deleting items from the list; or

(c) in the case of the list referred to in section 178 or 181—transferring items from one category in the list to another category in the list in accordance with Subdivision AA; or

(d) correcting an inaccuracy or updating the name of a listed threatened species or listed threatened ecological community.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

186 Amending list of threatened native species

Including native species in a category

(1) Subject to subsections (3), (4) and (5), the Minister must not include (whether as a result of a transfer or otherwise) a native species in a particular category unless satisfied that the native species is eligible to be included in that category.

(2) In deciding whether to include a native species in a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:

(a) whether the native species is eligible to be included in that category; or

(b) the effect that including the native species in that category could have on the survival of the native species.

Deleting native species from a category

(2A) The Minister must not delete (whether as a result of a transfer or otherwise) a native species from a particular category unless satisfied that:

(a) the native species is no longer eligible to be included in that category; or

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(b) the inclusion of the native species in that category is not contributing, or will not contribute, to the survival of the native species.

(2B) In deciding whether to delete a native species from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:

(a) whether the native species is eligible to be included in that category; or

(b) the effect that the inclusion of the native species in that category is having, or could have, on the survival of the native species.

Including similar species to an eligible species

(3) The Minister may include a native species in the critically endangered category if satisfied that:

(a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(3)) that it is difficult to differentiate between the 2 species; and

(b) this difficulty poses an additional threat to the last-mentioned species; and

(c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as critically endangered.

(4) The Minister may include a native species in the endangered category if satisfied that:

(a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(4)) that it is difficult to differentiate between the 2 species; and

(b) this difficulty poses an additional threat to the last-mentioned species; and

(c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as endangered.

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(5) The Minister may include a native species in the vulnerable category if satisfied that:

(a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(5)) that it is difficult to differentiate between the 2 species; and

(b) this difficulty poses an additional threat to the last-mentioned species; and

(c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as vulnerable.

187 Amending list of ecological communities

Including ecological communities in a category

(1) The Minister must not include (whether as a result of a transfer or otherwise) an ecological community in a particular category unless satisfied that the ecological community is eligible to be included in that category.

(2) In deciding whether to include an ecological community in a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:

(a) whether the ecological community is eligible to be included in that category; or

(b) the effect that including the ecological community in that category could have on the survival of the ecological community.

Deleting ecological communities from a category

(3) The Minister must not delete (whether as a result of a transfer or otherwise) an ecological community from a particular category unless satisfied that:

(a) the ecological community is no longer eligible to be included in that category; or

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(b) the inclusion of the ecological community in that category is not contributing, or will not contribute, to the survival of the ecological community.

(4) In deciding whether to delete an ecological community from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:
(a) whether the ecological community is eligible to be included in that category; or
(b) the effect that the inclusion of the ecological community in that category is having, or could have, on the survival of the ecological community.

188 Amending list of key threatening processes

(1) The Minister must not add a threatening process to the list unless satisfied that it is eligible to be treated as a key threatening process.

(2) The Minister must not delete a threatening process from the list unless satisfied that it is no longer eligible to be treated as a key threatening process.

(3) A process is a ***threatening process*** if it threatens, or may threaten, the survival, abundance or evolutionary development of a native species or ecological community.

(4) A threatening process is eligible to be treated as a key threatening process if:
(a) it could cause a native species or an ecological community to become eligible for listing in any category, other than conservation dependent; or
(b) it could cause a listed threatened species or a listed threatened ecological community to become eligible to be listed in another category representing a higher degree of endangerment; or
(c) it adversely affects 2 or more listed threatened species (other than conservation dependent species) or 2 or more listed threatened ecological communities.

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189 Minister must consider advice from Scientific Committee

(1) In deciding whether to make an amendment covered by paragraph 184(1)(aa), (b) or (d), the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the proposed amendment.

(1A) Subsection (1) has effect subject to section 192.

(1B) If advice from the Scientific Committee for the purposes of subsection (1) is to the effect that a particular native species, or a particular ecological community, is eligible to be included in the relevant list in a particular category, the advice must also contain:

(a) a statement that sets out:

(i) the grounds on which the species or community is eligible to be included in the category; and

(ii) the main factors that are the cause of it being so eligible; and

(b) either:

(i) information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or

(ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community; and

(c) a recommendation on the question whether there should be a recovery plan for the species or community.

(2) In preparing advice under subsection (1), the Scientific Committee may obtain advice from a person with expertise relevant to the subject matter of the proposed amendment.

(3) In preparing advice for a proposed amendment to delete an item:

(a) included in a category of a list referred to in section 178 or 181; and

(b) that had not been included in that category in accordance with subsection 186(3), (4) or (5);

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the only matters the Scientific Committee may consider are matters relating to:

(c) the survival of the native species or ecological community concerned; or

(d) the effect that the inclusion in the list of the native species or ecological community concerned is having, or could have, on the survival of that native species or ecological community.

(3A) In preparing advice for a proposed amendment to:

(a) include a native species in a category of the list referred to in section 178 in accordance with subsection 186(3), (4) or (5) because of the species' resemblance to another species; or

(b) delete a native species from a category of the list referred to in section 178 that had been included in that category in accordance with subsection 186(3), (4) or (5) because of the species' resemblance to another species;

the only matters the Scientific Committee may consider are matters relating to:

(c) the survival of either species; or

(d) the effect that the inclusion in the list of the first-mentioned species is having, or could have, on the survival of either species.

189A Certain information may be kept confidential

(1) This section applies if the Minister considers that the survival of a native species or ecological community could be threatened by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:

(a) the precise location of the species in the wild, or of the community;

(b) any other information about the species or community.

(2) It is sufficient compliance with this Act if only a general description of the location of the species or community is included

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in an instrument or other document created for the purposes of this Act.

189B Disclosure of Scientific Committee's assessments and advice

(1) A member of the Scientific Committee has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Committee or another member of the Committee:

(a) an assessment under section 194N in relation to whether an item is eligible for inclusion (whether as a result of a transfer or otherwise) in a list referred to in section 178, 181 or 183, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;

(b) advice under section 189 concerning an amendment covered by subsection 189(1) or any information relating to the advice.

(2) However:

(a) the duty not to disclose a thing described in paragraph (1)(a) in relation to an item does not exist after:

(i) registration under Division 3 of Part 4 of the *Legislative Instruments Act 2003* of an instrument made under section 189 in relation to the item; or

(ii) the Minister decides under paragraph 194Q(1)(b) not to include the item in a list referred to in section 178, 181 or 183; and

(b) the duty not to disclose a thing described in paragraph (1)(b) in relation to an amendment does not exist after:

(i) registration under Division 3 of Part 4 of the *Legislative Instruments Act 2003* of an instrument made under section 189 relating to the amendment; or

(ii) the Minister decides under this Subdivision not to remove the item from a list referred to in section 178, 181 or 183.

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(3) Subsection (1) does not apply to a disclosure of particular information if:

(a) the Chair of the Scientific Committee requests the Minister to give permission to disclose that information to a particular person (or persons within a particular group of persons); and

(b) the Minister gives that permission; and

(c) the disclosure is made to that person (or a person within that group).

(4) After a member of the Scientific Committee has ceased under subsection (2) to have a duty not to disclose:

(a) an assessment under section 194N in relation to whether an item is eligible for inclusion (whether as a result of a transfer or otherwise) in a list referred to in section 178, 181 or 183; or

(b) advice under section 189 concerning an amendment covered by subsection 189(1);

the member must give a copy of the assessment or advice to anyone who asks for it.

(5) If:

(a) a member of the Scientific Committee proposes to give a person under subsection (4):

(i) a copy of an assessment relating to an item concerning a native species or ecological community; or

(ii) a copy of advice relating to an amendment concerning a native species or ecological community; and

(b) the member is aware that, under section 189A, it would be sufficient compliance with this Act if the copy included only a general location of the species or community;

the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

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190 Scientific Committee may provide advice about species or communities becoming threatened

(1) If the Scientific Committee is of the opinion that a native species or ecological community is not eligible to be included in any category of the list mentioned in section 178 or 181, the Committee may give advice to the Minister concerning any action that is necessary to prevent the species or community becoming threatened.

(2) The Minister is to have regard to any advice given under subsection (1) in performing any function, or exercising any power, under this Act relevant to the species or community.

192 Rediscovery of threatened species that were extinct

(1) If the Minister is satisfied that a native species that is listed in the extinct category has been definitely located in nature since it was last listed as extinct, the Minister may, under section 184, transfer the species from the extinct category to another category without considering advice from the Scientific Committee.

(2) Subsection (1) does not prevent the Minister from making such an amendment after having considered advice from the Scientific Committee.

193 Species posing a serious threat to human health

(1) If the Minister is satisfied that a native species poses a serious threat to human health, the Minister may, by legislative instrument, determine that the species is not appropriate for inclusion in any of the categories of the list referred to in section 178.

(2) While the determination is in force, the species is not to be added to that list.

(4) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).

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194 Lists must be publicly available

The Minister must ensure that:

(a) up-to-date copies of the lists referred to in sections 178, 181 and 183 are available for free to the public on request; and

(b) up-to-date copies of the lists are available on the internet.

Note: The copies of the lists made publicly available may not contain certain information kept confidential under section 189A.

Subdivision AA—The nomination and listing process

194A Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for including an item in a list referred to in section 178, 181 or 183, or transferring an item from one category in one of those lists to another category in the list.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 194C).

The usual process involves the following steps for each assessment period for a list:

(a) the Minister may determine conservation themes (this step is optional) (see section 194D);

(b) the Minister invites people to nominate items for inclusion in the list referred to in section 178, 181 or 183, and gives the nominations to the Scientific Committee (see sections 194E and 194F);

(c) the Scientific Committee prepares, and gives to the Minister, a list of items (which will mostly be

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items that have been nominated) that it thinks should be assessed (see sections 194G to 194J);

(d) the Minister finalises the list of items that are to be assessed (see sections 194K and 194L);

(e) the Scientific Committee invites people to make comments about the item in the finalised list (see section 194M);

(f) the Scientific Committee assesses the item in the finalised list, and gives the assessments to the Minister (see sections 194N and 194P);

(g) the Minister decides whether an item that has been assessed should be included in the list referred to in section 178, 181 or 183 (see section 194Q).

The steps mentioned in paragraphs (a) to (d) will generally be completed before the start of the assessment period.

194B Definitions

(1) In this Subdivision:

assessment period has the meaning given by subsection 194C(1).

eligible for assessment consideration, in relation to an assessment period, has the meaning given by subsection 194G(3).

finalised priority assessment list for an assessment period has the meaning given by subsection 194K(4).

includes has a meaning affected by subsection (2).

proposed priority assessment list for an assessment period has the meaning given by subsection 194G(1).

Subdivision A List means a list referred to in section 178, 181 or 183.

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(2) A reference in this Subdivision to including an item in a list referred to in section 178 or 181 includes a reference to transferring the item from one category in the list to another category in the list.

194C Meaning of *assessment period*

(1) For the purposes of this Subdivision, each of the following is an ***assessment period*** for a Subdivision A List:

(a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph in relation to the Subdivision A List;

(b) each period of 12 months starting on an anniversary of the day so determined.

(2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.

(3) A determination under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the determination. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

194D Minister may determine conservation themes for an assessment period

(1) Before the Minister invites nominations for an assessment period for a Subdivision A List under section 194E, the Minister may determine one or more conservation themes that the Minister considers should be given priority in relation to the assessment period for the Subdivision A List.

(2) Without limiting subsection (1), the Minister may determine as a conservation theme that priority should be given to the conservation of:

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(a) particular groups of species; or
(b) particular species; or
(c) particular regions of Australia.

(3) The Minister may request advice from the Scientific Committee for the purpose of making a determination under subsection (1), and may have regard to any advice the Committee provides in response to the request.

(4) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

194E Minister to invite nominations for each assessment period

(1) Before the start of each assessment period for a Subdivision A List, the Minister must publish a notice inviting people to nominate items for inclusion in the Subdivision A List.

Note: Nominations can be for the transfer of an item already on a list covered by section 178 or 181 from one category in the list to another category in the list (see subsection 194B(2)).

(2) A notice under subsection (1):
(a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
(b) must invite people to nominate, to the Minister, items for inclusion in the Subdivision A List; and
(c) must identify the assessment period to which the notice relates; and
(d) must specify a date (the ***cut-off date***) by which nominations must be received, which must be at least 40 business days after the notice has been published as required by paragraph (a); and
(e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and
(f) may also include:

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(i) information related to any conservation themes that the Minister has determined under section 194D should be given priority in relation to the assessment period for the Subdivision A List; and

(ii) any other information that the Minister considers appropriate.

(3) The regulations must provide for the following:

(a) how a notice under subsection (1) is to be published;

(b) the manner and form for making nominations;

(c) what information is to be included in a nomination.

194F Minister to give nominations to Scientific Committee

Nominations in relation to first assessment period

(1) Within 30 business days after the cut-off date specified in the notice under subsection 194E(1) for the first assessment period, the Minister must give the Scientific Committee the nominations that the Minister:

(a) had received before the end of that cut-off date; and

(b) had not already forwarded to the Scientific Committee, under section 191 (as in force before the commencement of this section), to assess; and

(c) had not already rejected under section 191 (as in force before the commencement of this section); and

(d) does not reject under subsection (3).

Nominations in relation to later assessment periods

(2) Within 30 business days after the cut-off date (the ***current cut-off date***) specified in the notice under subsection 194E(1) for an assessment period (other than the first) for a Subdivision A List, the Minister must give the Scientific Committee the nominations that were received by the Minister in the period:

(a) starting immediately after the end of the cut-off date specified in the notice under subsection 194E(1) for the

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immediately preceding assessment period for the Subdivision A List; and

(b) ending at the end of the current cut-off date for the Subdivision A List;

other than any such nominations that the Minister has rejected under subsection (3).

Minister may reject nominations

(3) The Minister may, in writing, reject a nomination if the Minister considers that:

(a) the nomination is vexatious, frivolous or not made in good faith; or

(b) the Minister considers that regulations referred to in paragraph 194E(3)(b) or (c) have not been complied with in relation to the nomination.

(4) If a nomination is rejected under paragraph (3)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

Definition

(5) In this section:

nomination means a nomination of an item for inclusion in a Subdivision A List.

194G Scientific Committee to prepare proposed priority assessment list

(1) Within 40 business days after the Scientific Committee receives the nominations as required by subsection 194F(1) in relation to an assessment period for a Subdivision A List, the Committee must prepare and give to the Minister a list (the ***proposed priority assessment list***) for the assessment period for the Subdivision A List.

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(2) The proposed priority assessment list for the Subdivision A List is to consist of such of the items that are eligible for assessment consideration in relation to the assessment period for the Subdivision A List as the Scientific Committee considers it appropriate to include in the proposed priority assessment list, having regard to:

(a) any conservation themes determined by the Minister under section 194D in relation to the assessment period for the Subdivision A List; and

(b) the Committee's own views about what should be given priority in relation to the assessment period for the Subdivision A List; and

(c) the Committee's capacity to make assessments under this Division while still performing its other functions; and

(d) any other matters that the Committee considers appropriate.

(3) An item is ***eligible for assessment consideration*** in relation to the assessment period for a Subdivision A List if:

(a) the item has been nominated by a nomination referred to in subsection (1); or

(b) the Committee itself wishes to nominate the item for inclusion in the Subdivision A List; or

(c) the item was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) for the Subdivision A List but was not included in the finalised priority assessment list for that assessment period for the Subdivision A List.

(4) Without limiting the generality of the Scientific Committee's discretion under subsection (2), the Committee does not have to include in the proposed priority assessment list an item that has been nominated if the Committee considers that:

(a) if the item is not on the Subdivision A List concerned—it is unlikely that the item is eligible to be included in the Subdivision A List; or

(b) if the nomination is for the transfer of the item to another category in the Subdivision A List concerned—it is unlikely

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that the item is eligible to be included in that other category of the Subdivision A List.

(5) For the purposes of subsection (4), the Committee is not required to have regard to any information beyond the information that was included in the nomination.

(6) The proposed priority assessment list is not a legislative instrument.

194H Matters to be included in proposed priority assessment list

(1) The proposed priority assessment list for an assessment period for a Subdivision A List is to include, for each item in the proposed priority assessment list:
  (a) a description of the item; and
  (b) an assessment completion time; and
  (c) any other information required by the regulations.

(2) The assessment completion time for an item must be either:
  (a) a time that is at or before the end of the assessment period for the proposed priority assessment list; or
  (b) if the Scientific Committee considers it likely that making an assessment in relation to the item will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period for the proposed priority assessment list).

194J Statement to be given to Minister with proposed priority assessment list

(1) When the Scientific Committee gives the Minister the proposed priority assessment list for an assessment period for a Subdivision A List, the Committee must also give the Minister a statement setting out such information as the Committee considers appropriate relating to:

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(a) for each item that is included in the proposed priority assessment list—why the Committee included the item in the list; and

(b) for each item that is not included in the proposed priority assessment list but that was eligible for assessment consideration because of paragraph 194G(3)(a) or (c)—why the Committee did not include the item in the proposed priority assessment list.

(2) The statement must also identify, as items nominated by the Scientific Committee, any items that are included in the proposed priority assessment list because the Committee itself wishes to nominate them (see paragraph 194G(3)(b)).

194K The finalised priority assessment list

(1) Within 20 business days after the Minister, under section 194G, receives the proposed priority assessment list for an assessment period for a Subdivision A List, the Minister may, in writing, make changes to the proposed priority assessment list as mentioned in subsection (2).

(2) The changes the Minister may make are as follows:

(a) including an item in the proposed priority assessment list (and also including the matters referred to in subsection 194H(1));

(b) omitting an item from the proposed priority assessment list (and also omitting the matters referred to in subsection 194H(1));

(c) changing the assessment completion time for an item in the proposed priority assessment list;

(d) any other changes of a kind permitted by the regulations.

(3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.

(4) At the end of the period of 20 business days referred to in subsection (1), the proposed priority assessment list, as changed (if

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at all) by the Minister, becomes the ***finalised priority assessment list*** for the assessment period for the Subdivision A List.

(5) The Minister must notify the Scientific Committee of all changes that the Minister makes to the proposed priority assessment list.

(6) The finalised priority assessment list is not a legislative instrument.

194L Publication of finalised priority assessment list

(1) The Scientific Committee must publish the finalised priority assessment list for an assessment period for a Subdivision A List on the internet.

(2) The Scientific Committee must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

194M Scientific Committee to invite comments on items in finalised priority assessment list

(1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must publish a notice inviting people to make comments on the item.

(2) The Scientific Committee may, under subsection (1), publish a single notice relating to all of the items on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the items.

(3) A notice under subsection (1), in relation to an item or items:
  (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
  (b) must identify the item or items to which the notice relates; and
  (c) if the Subdivision A List is the list referred to in section 178 or 181—must identify the category of the Subdivision A List in which the item or items are proposed to be included; and

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(d) must invite people to make comments, to the Scientific Committee, setting out:
  (i) if the Subdivision A List is the list referred to in section 178 or 181—views about whether the item or items are eligible for inclusion in that category of the Subdivision A List; and
  (ii) if the Subdivision A List is the list referred to in section 183—views whether the item or items are eligible for inclusion in the Subdivision A List; and
  (iii) reasons supporting those views; and
(e) must specify the date (the ***cut-off date***) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
(f) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
(g) may also invite people to comment on other matters that the Scientific Committee considers appropriate; and
(h) may also include any other information that the Scientific Committee considers appropriate.

(4) The regulations must provide for the following:
  (a) how a notice under subsection (1) is to be published;
  (b) the manner and form for making comments.

194N Scientific Committee to assess items on finalised priority assessment list and give assessments to Minister

(1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P):
  (a) make a written assessment of:
    (i) whether the item is eligible for inclusion in the Subdivision A List; and

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(ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which the item is eligible to be included; and

(b) give to the Minister:

(i) the written assessment (or a copy of it); and

(ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).

(2) In making an assessment in relation to an item, the Scientific Committee, subject to subsections (3) and (4):

(a) must take into account the comments the Committee receives in response to the notice under subsection 194M(1) in relation to the item; and

(b) may seek, and have regard to, information or advice from any source.

(3) The Scientific Committee is not required to take a comment referred to in paragraph (2)(a) into account if:

(a) the Committee does not receive the comment until after the cut-off date specified in the notice under subsection 194M(1) in relation to the item; or

(b) the Committee considers that regulations referred to in paragraph 194M(4)(b) have not been complied with in relation to the comment.

(4) In making an assessment, the only matters the Scientific Committee may consider are matters relating to:

(a) whether the item is eligible for inclusion in the Subdivision A List; or

(b) the effect that including the item in that List could have on the survival of the native species or ecological community concerned.

194P Time by which assessments to be provided to Minister

(1) Subsection 194N(1) must be complied with, in relation to an item included in the finalised priority assessment list for an assessment

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period for a Subdivision A List, by the assessment completion time specified in the finalised priority assessment list for the item, or by that time as extended under this section.

(2) The Scientific Committee may request the Minister to extend the assessment completion time (or that time as previously extended) if the Committee considers that it needs more time to make the assessment.

(3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.

(4) An extension under subsection (3) must be made in writing.

(5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

194Q Decision about inclusion of an item in the Subdivision A List

Minister to decide whether or not to include item

(1) After receiving from the Scientific Committee an assessment under section 194N of an item, the Minister must:

(a) include the item in the Subdivision A List concerned; or

(b) in writing, decide not to include the item in the Subdivision A List concerned.

Note 1: Under this subsection the Minister can transfer an item already on a Subdivision A List to a different category in the List (see subsection 194B(1)).

Note 2: Sections 186, 187 and 188 contain rules about including items in a Subdivision A List.

(2) If, under subsection (1), the Minister transfers an item to a category of the Subdivision A List, the Minister must at the same time

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delete the item from the category in which it was included before the transfer.

(3) Subject to subsection (4), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.

(4) The Minister may, in writing, extend or further extend the period for complying with subsection (1).

(5) Particulars of an extension or further extension under subsection (4) must be published on the internet and in any other way required by regulations.

(6) For the purpose of deciding what action to take under subsection (1) in relation to the item:

(a) the Minister must have regard to:

(i) the Scientific Committee's assessment of the item; and

(ii) the comments (if any), a copy of which were given to the Minister under subsection 194N(1) with the assessment; and

(b) the Minister may seek, and have regard to, information or advice from any source.

Additional requirements if Minister decides to include item

(7) If the Minister includes the item in the Subdivision A List, he or she must, within a reasonable time:

(a) if the item was nominated by a person in response to a notice under subsection 194E(1)—advise the person that the item has been included in the Subdivision A List; and

(b) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and

(c) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.

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Additional requirements if Minister decides not to include item

(8) If the Minister decides not to include the item in the Subdivision A List, the Minister must, within 10 business days after making the decision:
  (a) publish the decision on the internet; and
  (b) if the item was nominated by a person in response to a notice under subsection 194E(1)—advise the person of the decision, and of the reasons for the decision.

194R Scientific Committee may obtain advice

In performing its functions under this Subdivision, the Scientific Committee may obtain advice from a person with expertise relevant to the inclusion of an item in a Subdivision A List.

194S Co-ordination with Australian Heritage Council—Committee undertaking assessment

(1) This section applies if:
  (a) the Scientific Committee undertakes an assessment under this Subdivision; and
  (b) before giving the assessment to the Minister, the Committee becomes aware that:
    (i) the Australian Heritage Council is undertaking, or has undertaken, an assessment of a place under Subdivision BA or BB of Division 1A of Part 15 or under Subdivision BA or BB of Division 3A of Part 15; and
    (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).

(2) A member of the Scientific Committee may discuss the matter with a member of the Australian Heritage Council.

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(3) Before the Scientific Committee gives an assessment to the Minister under this Subdivision, the Committee must comply with subsection (4) or (6).

(4) If the Australian Heritage Council has not yet given the Minister an assessment that deals with that matter, the Scientific Committee must:

(a) give the Council a copy of the assessment that the Committee proposes to give to the Minister; and

(b) invite the Council to give the Committee its comments in relation to that matter; and

(c) take into account, in finalising the assessment that the Committee gives the Minister, any comments that the Council makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.

(5) If the Scientific Committee gives the Australian Heritage Council a copy of a proposed assessment under paragraph (4)(a), the Committee must also give the Council a copy of the assessment that the Committee gives the Minister.

(6) If:

(a) the Australian Heritage Council has already given the Minister an assessment that deals with that matter; and

(b) the Scientific Committee has been given a copy of that assessment;

the Committee must take that assessment into account in finalising the assessment that the Committee gives the Minister.

(7) If, under section 324JR, 324JS, 341JQ or 341JR, the Australian Heritage Council gives the Scientific Committee a proposed assessment, or an assessment, that deals with a particular matter because the Committee is undertaking an assessment that deals with that matter, a member of the Committee may discuss that matter with a member of the Council.

(8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 189B.

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194T Co-ordination with Australian Heritage Council—Committee given assessment to Minister

(1) This section applies if:
  (a) the Scientific Committee has given to the Minister an assessment under this Subdivision; and
  (b) the Committee is or becomes aware that:
    (i) the Australian Heritage Council is undertaking an assessment of a place under Subdivision BA or BB of Division 1A of Part 15 or under Subdivision BA or BB of Division 3A of Part 15; and
    (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).

(2) The Scientific Committee must, within 7 days after giving the assessment to the Minister, or becoming aware, as referred to in paragraph (1)(b):
  (a) ensure the Australian Heritage Council is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
  (b) give the Council a copy of the assessment.

(3) A member of the Scientific Committee may discuss the matter with a member of the Australian Heritage Council.

(4) Subsections (2) and (3) have effect despite section 189B.

Subdivision B—Permit system

195 Subdivision does not apply to cetaceans

This Subdivision does not apply to a member of a listed threatened species that is a cetacean.

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196 Killing or injuring member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a species or a member of an ecological community; and

(c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and

(d) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

196A Strict liability for killing or injuring member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a native species or a member of an ecological community; and

(c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and

(d) the member is in or on a Commonwealth area.

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Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

196B Taking etc. member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a species or a member of an ecological community; and

(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and

(c) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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196C Strict liability for taking etc. member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a native species or a member of an ecological community; and

(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and

(c) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

196D Trading etc. member of listed threatened species or community taken in Commonwealth area

(1) A person commits an offence if:

(a) the person trades, keeps or moves a member of a species or a member of an ecological community; and

(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and

(c) the member has been taken in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

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(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

196E Strict liability for trading etc. member of listed threatened species or community taken in Commonwealth area

(1) A person commits an offence if:

(a) the person trades, keeps or moves a member of a native species or a member of an ecological community; and

(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and

(c) the member has been taken in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

196F Aggravated offence—member of listed threatened species that is a dugong or turtle

(1) For the purposes of this Subdivision, an offence against section 196, 196A, 196B, 196C, 196D or 196E (the ***underlying***

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offence) is an ***aggravated offence*** if the member to which the underlying offence relates is:

(a) a member of a listed threatened species; and

(b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(g) and (h), and on the day this section commenced, these species were listed threatened species.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(3) Strict liability applies to the physical elements of circumstance, that the member is:

(a) a member of a listed threatened species; and

(b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

197 Certain actions are not offences

Sections 196, 196A, 196B, 196C, 196D, 196E and 207B do not apply to:

(a) an action authorised by a permit that was issued under section 201 and is in force; or

(b) an action provided for by, and done in accordance with, a recovery plan in force under Division 5; or

(c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5) or (6) or 18A(1) or (2); or

(d) an action that:

(i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2); and

(ii) is taken in accordance with a management arrangement or authorisation process that is an accredited

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management arrangement or an accredited authorisation process for the purposes of the declaration; or

(da) an action that:

(i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2); and

(ii) is taken in accordance with the bioregional plan to which the declaration relates; or

(db) in the case of sections 196B, 196C, 196D and 196E—an action that is trading, keeping or moving a member of a listed threatened species or a listed ecological community, if:

(i) when the member of the species or community was taken, the species or community was not a listed threatened species or a listed threatened ecological community, as the case requires; and

(ii) the trading, keeping or moving of the member of the species or community occurs during the period of 6 months that started when the species or community became a listed threatened species or a listed threatened ecological community, as the case requires; or

(e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed threatened species or listed threatened ecological community; or

(f) an action that is reasonably necessary to prevent a risk to human health; or

(g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

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(j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 208A; or

(l) an action, to the extent that it is covered by subsection 517A(7); or

(m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

(i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and

(ii) is in force; or

(p) an action that is taken in accordance with a permit that:

(i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and

(ii) is in force; or

(q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p).

Note: A defendant bears an evidential burden in relation to the matters in this section. See subsection 13.3(3) of the *Criminal Code*.

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198 Operation of sections 18 and 18A not affected

To avoid doubt, sections 196, 196A, 196B, 196C, 196D, 196E, 196F and 197 do not affect the operation of section 18 or 18A.

199 Failing to notify taking of listed threatened species or listed ecological community

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action either:

(i) results in the death or injury of a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area; or

(ii) consists of, or involves, trading, taking, keeping or moving a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area;

(b) the person's action does not constitute an offence against section 196, 196A, 196B, 196C, 196D or 196E, otherwise than because of paragraph 197(db);

(c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 197 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 196, 196A, 196B, 196C, 196D or 196E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 204 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

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(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

(a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or

(b) the action is in a class of actions:

(i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and

(ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:

(a) fails to do an act; and

(b) the failing to do the act results in a contravention of subsection (2).

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

200 Application for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 201.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:

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(a) details of the application; and
(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

201 Minister may issue permits

(1) Subject to subsections (3) and (3A), the Minister may, on application by a person under section 200, issue a permit to the person.

(2) A permit authorises its holder to take an action specified in the permit without breaching section 196, 196A, 196B, 196C, 196D, 196E or 207B.

(3) The Minister must not issue the permit unless satisfied that:
(a) the specified action will contribute significantly to the conservation of the listed threatened species or listed threatened ecological community concerned; or
(b) the impact of the specified action on a member of the listed threatened species or listed threatened ecological community concerned is incidental to, and not the purpose of, the taking of the action and:
(i) the taking of the action will not adversely affect the survival or recovery in nature of that species or ecological community; and
(ii) the taking of the action is not inconsistent with a recovery plan that is in force for that species or ecological community; and
(iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species or ecological community; or

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(c) the specified action is of particular significance to indigenous tradition and will not adversely affect the survival or recovery in nature of the listed threatened species or listed threatened ecological community concerned; or

(d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed threatened species or listed threatened ecological community concerned.

(3A) The Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the listed threatened species or listed threatened ecological community concerned.

(4) In this Act:

indigenous tradition means the body of traditions, observances, customs and beliefs of indigenous persons generally or of a particular group of indigenous persons.

(5) In making a decision on the application, the Minister must consider the comments (if any) received:

(a) in response to the invitation under subsection 200(3) for anyone to give the Minister comments on whether the permit should be issued; and

(b) within the period specified in the invitation.

202 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The Minister may, in accordance with the regulations:

(a) vary or revoke a condition of a permit; or

(b) impose further conditions of a permit.

(3) Without limiting subsections (1) and (2), conditions of a permit may include conditions stating the period within which the action specified in the permit may be taken.

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203 Contravening conditions of a permit

The holder of a permit commits an offence punishable on conviction by a fine not exceeding 300 penalty units if:

(a) he or she does, or fails to do, an act or thing; and

(b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

204 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:

(a) the permit contains a condition permitting the holder to do so; and

(b) the authority is given in accordance with any requirements set out in the condition.

(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

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205 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

206 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:

(a) suspend a permit for a specified period; or

(b) cancel a permit.

206A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Review Tribunal for review of a decision:

(a) to issue or refuse a permit; or

(b) to specify, vary or revoke a condition of a permit; or

(c) to impose a further condition of a permit; or

(d) to transfer or refuse to transfer a permit; or

(e) to suspend or cancel a permit.

(2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

207 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

(a) the grant or the transfer of a permit;

(b) the variation or revocation of a condition of a permit;

(c) the imposition of a further condition of a permit.

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Subdivision BA—Protecting critical habitat

207A Register of critical habitat

(1) The Minister must cause to be kept in accordance with the regulations (if any) a register in which the Minister may list habitat identified by the Minister in accordance with the regulations as being critical to the survival of a listed threatened species or listed threatened ecological community.

(1A) In considering whether to list habitat, the Minister must take into account the potential conservation benefit of listing the habitat.

(1B) Subsection (1) does not limit the matters:

(a) that the Minister may take into account in considering whether to list habitat; or

(b) that the regulations may require or permit the Minister to take into account in considering whether to list habitat.

(2) The regulations must require the Minister to consider scientific advice in identifying the habitat.

(3) The register must be made available for public inspection in accordance with the regulations (if any).

(3A) Particular material included in the register does not have to be made available for public inspection if the Minister considers that the interests of relevant landholders could be impeded or compromised by:

(a) the disclosure of the material; or

(b) without limiting paragraph (a)—the presence or actions of persons if the material were disclosed.

(4) Habitat listed in the register in relation to a species or ecological community is ***critical habitat*** for the species or ecological community.

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207B Offence of knowingly damaging critical habitat

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the person knows that the action significantly damages or will significantly damage critical habitat for a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and

(c) the habitat is in or on a Commonwealth area.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraph (1)(c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

(4) To avoid doubt, this section does not affect the operation of Division 2, 3 or 4.

207C Sale or lease of Commonwealth land containing critical habitat

(1) This section applies to a Commonwealth agency that executes a contract for the sale or lease to someone else of Commonwealth land that includes critical habitat for a listed threatened species or listed threatened ecological community. It does not matter whether the Commonwealth agency executes the contract for the Commonwealth or on its own behalf.

(2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the critical habitat.

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(3) The Commonwealth agency must take reasonable steps to ensure as far as practicable that the covenant binds the successors in title of the buyer or lessee (as appropriate).

Subdivision C—Miscellaneous

208A Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:

(a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

(b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or

(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:

(i) made by a State or self-governing Territory; and

(ii) in force under a law of the State or self-governing Territory; or

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed threatened species (other than conservation dependent species) are not killed or injured as a result of the fishing; and

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(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

208 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of members of listed threatened species or listed threatened ecological communities killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which members of listed threatened species or listed threatened ecological communities may be killed or taken otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to listed threatened species or listed threatened ecological communities; and

(d) provide for the protection and conservation of listed threatened species or listed threatened ecological communities; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.

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Division 2—Migratory species

Subdivision A—Listing

209 Listed migratory species

(1) The Minister must:
  (a) establish a list of migratory species for the purposes of this Act; and
  (b) amend the list, as necessary, so that it includes all species required to be included in the list under subsection (3).

(2) The Minister must establish the list within 30 days after the commencement of this Act.

(3) The list must include:
  (a) all migratory species that are:
    (i) native species; and
    (ii) from time to time included in the appendices to the Bonn Convention; and
  (b) all migratory species from time to time included in annexes established under JAMBA and CAMBA; and
  (c) all native species from time to time identified in a list established under, or an instrument made under, an international agreement approved by the Minister under subsection (4).

  The list must not include any other species.

(4) The Minister may, by legislative instrument, approve an international agreement for the purposes of subsection (3) if satisfied it is an agreement relevant to the conservation of migratory species.

(6) The Minister may correct an inaccuracy or update the name of a migratory species.

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(7) The list of migratory species made under subsection (1), and any amendments to the list made under paragraph (1)(b) or subsection (6), are legislative instruments, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the list or any amendments.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the list or any amendments. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

(8) In this Act:

migratory species has the meaning given by Article I of the Bonn Convention.

Subdivision B—Permit system

210 Subdivision does not apply to members of listed threatened species or cetaceans

This Subdivision does not apply to a member of a listed migratory species that is a member of a listed threatened species or a cetacean.

211 Killing or injuring member of listed migratory species

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a species; and

(c) the member is a member of a listed migratory species; and

(d) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

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Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

211A Strict liability for killing or injuring member of listed migratory species

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a migratory species; and

(c) the member is a member of a listed migratory species; and

(d) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

211B Taking etc. member of listed migratory species

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a species; and

(b) the member is a member of a listed migratory species; and

(c) the member is in or on a Commonwealth area.

Penalty:

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(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

211C Strict liability for taking etc. member of listed migratory species

(1) A person commits an offence if:
(a) the person takes, trades, keeps or moves a member of a migratory species; and
(b) the member is a member of a listed migratory species; and
(c) the member is in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—1,500 penalty units;
(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

211D Trading etc. member of listed migratory species taken in Commonwealth area

(1) A person commits an offence if:
(a) the person trades, keeps or moves a member of a species; and

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(b) the member is a member of a listed migratory species; and
(c) the member has been taken in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

211E Strict liability for trading etc. member of listed migratory species taken in Commonwealth area

(1) A person commits an offence if:
(a) the person trades, keeps or moves a member of a migratory species; and
(b) the member is a member of a listed migratory species; and
(c) the member has been taken in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—1,500 penalty units;
(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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211F Aggravated offence—member of listed migratory species that is a dugong or turtle

(1) For the purposes of this Subdivision, an offence against section 211, 211A, 211B, 211C, 211D or 211E (the ***underlying offence***) is an ***aggravated offence*** if the member to which the underlying offence relates is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(f), (g) and (h), and on the day this section commenced, these species were listed migratory species.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(3) Strict liability applies to the physical element of circumstance, that the member is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

212 Certain actions are not offences

(1) Sections 211, 211A, 211B, 211C, 211D and 211E do not apply to:
- (a) an action authorised by a permit that was issued under section 216 and is in force; or
- (b) an action provided for by, and taken in accordance with, a wildlife conservation plan made or adopted under Division 5 and in force; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); or
- (d) an action that:
  - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); and
  - (ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited

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management arrangement or an accredited authorisation process for the purposes of the declaration; or

(da) an action that:

(i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); and

(ii) is taken in accordance with the bioregional plan to which the declaration relates; or

(db) in the case of sections 211B, 211C, 211D and 211E—an action that is trading, keeping or moving a member of a listed migratory species, if:

(i) when the member of the species was taken, the species was not a listed migratory species; and

(ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed migratory species; or

(e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed migratory species; or

(f) an action that is reasonably necessary to prevent a risk to human health; or

(g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

(j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 222A; or

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(l) an action, to the extent that it is covered by subsection 517A(7); or

(m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

(i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and

(ii) is in force; or

(p) an action that is taken in accordance with a permit that:

(i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and

(ii) is in force; or

(q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p); or

(r) an action that is taken in the course of recreational fishing and the action:

(i) consists of, or involves, taking, trading, keeping or moving; or

(ii) results in the death or injury of;

a shortfin mako shark, a longfin mako shark or a porbeagle shark.

Note: A defendant bears an evidential burden in relation to the matters in this section. See subsection 13.3(3) of the *Criminal Code*.

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(2) For the purposes of paragraph (1)(r), ***recreational fishing*** includes (but is not limited to) the following types of fishing:

(a) fishing from a charter boat (within the meaning of the *Fisheries Management Act 1991*), including fishing by the person in charge of the boat, the crew of the boat or any other person on the boat;

(b) fishing in a fishing competition (whether or not in a professional capacity);

(c) fishing that is undertaken primarily for:

(i) inclusion on a website, or in a film, video, television program or radio program; or

(ii) description or representation in a magazine, newspaper, book or other such document.

213 Operation of sections 20 and 20A not affected

To avoid doubt, sections 211, 211A, 211B, 211C, 211D, 211E, 211F and 212 do not affect the operation of section 20 or 20A.

214 Failing to notify taking etc. of listed migratory species

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action either:

(i) results in the death or injury of a member of a listed migratory species that is in or on a Commonwealth area; or

(ii) consists of, or involves, trading, taking, keeping or moving a member of a listed migratory species that is in or on a Commonwealth area;

(b) the person's action does not constitute an offence against section 211, 211A, 211B, 211C, 211D or 211E, otherwise than because of paragraph 212(db) or (r);

(c) the person's action is not an action that the person was authorised by a permit to take.

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Note 1: Section 212 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 211, 211A, 211B, 211C, 211D or 211E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 219 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

(a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or

(b) the action is in a class of actions:

(i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and

(ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:

(a) fails to do an act; and

(b) the failing to do the act results in a contravention of subsection (2).

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Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

215 Application for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 216.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:
  (a) details of the application; and
  (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

216 Minister may issue permits

(1) Subject to subsection (3), the Minister may, on application by a person under section 215, issue a permit to the person.

(2) A permit authorises its holder to take an action specified in the permit without breaching section 211, 211A, 211B, 211C, 211D or 211E.

(3) The Minister must not issue the permit unless satisfied that:
  (a) the specified action will contribute significantly to the conservation of the listed migratory species concerned or other listed migratory species; or
  (b) the impact of the specified action on a member of the listed migratory species concerned is incidental to, and not the purpose of, the taking of the action and:

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(i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and

(ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and

(iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or

(c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed migratory species concerned, or a population of that species; or

(d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed migratory species concerned.

(4) In making a decision on the application, the Minister must consider the comments (if any) received:

(a) in response to the invitation under subsection 215(3) for anyone to give the Minister comments on whether the permit should be issued; and

(b) within the period specified in the invitation.

217 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The Minister may, in accordance with the regulations:

(a) vary or revoke a condition of a permit; or

(b) impose further conditions of a permit.

218 Contravening conditions of a permit

The holder of a permit commits an offence punishable on conviction by a fine not exceeding 300 penalty units if:

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(a) he or she does, or fails to do, an act or thing; and
(b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

219 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:
(a) the permit contains a condition permitting the holder to do so; and
(b) the authority is given in accordance with any requirements set out in the condition.

(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

220 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

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221 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:

(a) suspend a permit for a specified period; or

(b) cancel a permit.

221A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Review Tribunal for review of a decision:

(a) to issue or refuse a permit; or

(b) to specify, vary or revoke a condition of a permit; or

(c) to impose a further condition of a permit; or

(d) to transfer or refuse to transfer a permit; or

(e) to suspend or cancel a permit.

(2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

222 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

(a) the grant or the transfer of a permit;

(b) the variation or revocation of a condition of a permit;

(c) the imposition of a further condition of a permit.

Subdivision C—Miscellaneous

222A Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:

(a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

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(b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or

(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:

(i) made by a State or self-governing Territory; and

(ii) in force under a law of the State or self-governing Territory; or

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and

(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

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223 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of members of listed migratory species killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which members of listed migratory species may be killed or taken otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to listed migratory species; and

(d) provide for the protection and conservation of listed migratory species; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.

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Division 3—Whales and other cetaceans

Subdivision A—Application of Division

224 Application of Division

(1) This Division extends to acts, omissions, matters and things outside Australia (whether in a foreign country or not), except so far as the contrary intention appears.

(2) A provision of this Division that has effect in relation to a place outside the outer limits of the Australian Whale Sanctuary applies only in relation to:
  (a) Australian nationals; and
  (b) Australian permanent residents; and
  (d) the Commonwealth; and
  (e) Commonwealth agencies; and
  (f) Australian aircraft; and
  (g) Australian vessels; and
  (h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).

(3) This Division applies to a vessel as if it were an Australian vessel if:
  (a) the vessel is a boat within the meaning of the *Fisheries Management Act 1991*; and
  (b) a declaration, under subsection 4(2) of that Act, that the vessel is taken to be an Australian boat is in force.

Subdivision B—Australian Whale Sanctuary and important cetacean habitat areas

225 Australian Whale Sanctuary

(1) The Australian Whale Sanctuary is established in order to give formal recognition of the high level of protection and management

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afforded to cetaceans in Commonwealth marine areas and prescribed waters.

(2) The ***Australian Whale Sanctuary*** comprises:

(a) any waters of the sea inside the seaward boundary of the exclusive economic zone, except:

(i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and

(ii) waters within the limits of a State or the Northern Territory; and

(b) any waters over the continental shelf, except:

(i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and

(ii) waters within the limits of a State or the Northern Territory; and

(iii) waters covered by paragraph (a); and

(c) so much of the coastal waters of a State or the Northern Territory as are prescribed waters.

Note: This subsection is subject to subsection 5(3).

226 Prescribed waters

(1) The regulations may declare the whole, or a specified part, of the coastal waters of a State or the Northern Territory to be prescribed waters.

(2) Before the Governor-General makes a regulation under subsection (1), the Minister must obtain the agreement of the relevant Minister of the State or the Northern Territory.

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227 Coastal waters

(1) Section 15B of the *Acts Interpretation Act 1901* does not apply in relation to this Division.

(2) The ***coastal waters*** of a State or the Northern Territory are:
  (a) the part or parts of the territorial sea that are:
    (i) within 3 nautical miles of the baseline of the territorial sea; and
    (ii) adjacent to that State or Territory; and
  (b) any marine or tidal waters that are inside that baseline and are adjacent to that State or Territory but are not within the limits of a State or that Territory.

Note: Generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast.

(3) Any part of the territorial sea that is adjacent to the Jervis Bay Territory is, for the purposes of subsection (2), taken to be adjacent to New South Wales.

228 Minister may make declaration for coastal waters

(1) If the Minister is satisfied that a law of a State or the Northern Territory adequately protects cetaceans in the coastal waters, or a part of the coastal waters, of the State or Territory, the Minister may make a declaration accordingly, whether or not those coastal waters or that part are prescribed waters.

(2) A declaration must be in writing.

228A Important cetacean habitat areas

(1) The Minister may, by legislative instrument, declare a specified area in the Australian Whale Sanctuary to be an important cetacean habitat area.

(2) The regulations may specify criteria to be applied by the Minister in determining whether to declare an area to be an important

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cetacean habitat area. If regulations are made for the purposes of this section, the Minister may declare an area to be an important cetacean habitat area only if he or she is satisfied that the area meets the criteria prescribed by the regulations.

Subdivision C—Offences

229 Killing or injuring a cetacean

(1) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action results in the death or injury of a cetacean; and
  (c) the cetacean is in:
    (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
    (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(1A) Strict liability applies to paragraph (1)(c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

229A Strict liability for killing or injuring a cetacean

(1) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action results in the death or injury of a cetacean; and

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(c) the cetacean is in:

(i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or

(ii) waters beyond the outer limits of the Australian Whale Sanctuary.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

229B Intentionally taking etc. a cetacean

(1) A person commits an offence if:

(a) the person takes, trades, keeps, moves or interferes with a cetacean; and

(b) the cetacean is in:

(i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or

(ii) waters beyond the outer limits of the Australian Whale Sanctuary.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraph (1)(b).

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Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

(4) In this Act:

interfere with a cetacean includes harass, chase, herd, tag, mark or brand the cetacean.

trade a cetacean:

(a) includes:

(i) buy the cetacean, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or

(ii) sell the cetacean, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or

(iii) cause or allow any of the acts referred to in subparagraph (i) or (ii) to be done; but

(b) does not include export the cetacean from Australia or an external Territory or import it into Australia or an external Territory.

Note: For provisions relating to export or import, see Part 13A.

229C Strict liability for taking etc. a cetacean

(1) A person commits an offence if:

(a) the person takes, trades, keeps, moves or interferes with a cetacean; and

(b) the cetacean is in:

(i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or

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(ii) waters beyond the outer limits of the Australian Whale Sanctuary.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a) and (b).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

229D Treating cetaceans

Treating unlawfully killed or taken cetaceans

(1) A person commits an offence if:
(a) the person treats a cetacean; and
(b) the cetacean has been:
(i) killed in contravention of section 229 or 229A; or
(ii) taken in contravention of section 229B or 229C.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) An offence against subsection (1) is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

Treating unlawfully imported cetaceans

(2A) A person commits an offence if:
(a) the person treats a cetacean; and
(b) the cetacean has been unlawfully imported.

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Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(2B) An offence against subsection (2A) is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

(3) In this Act:

treat a cetacean means divide or cut up, or extract any product from, the cetacean.

230 Possession of cetaceans

Possession of unlawfully killed cetaceans

(1) A person commits an offence if:
  (a) the person has in his or her possession:
    (i) a cetacean; or
    (ii) a part of a cetacean; or
    (iii) a product derived from a cetacean; and
  (b) the cetacean has been:
    (i) killed in contravention of section 229 or 229A; or
    (ii) taken in contravention of section 229B or 229C.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) An offence against subsection (1) is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

Possession of unlawfully imported cetaceans

(3) A person commits an offence if:
  (a) the person has in his or her possession:
    (i) a cetacean; or

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(ii) a part of a cetacean; or

(iii) a product derived from a cetacean; and

(b) the cetacean, part or product, as the case may be, has been unlawfully imported.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(4) An offence against subsection (3) is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

231 Certain actions are not offences

Sections 229, 229A, 229B, 229C, 229D and 230 do not apply to:

(a) an action authorised by a permit that was issued under section 238 and is in force; or

(aa) an action that is whale watching carried out in accordance with regulations referred to in paragraph 238(3)(c), but only if:

(i) the whale watching is not carried out for a commercial purpose; or

(ii) the whale watching is carried out in an area that is not an important cetacean habitat area; or

(b) an action provided for by, and taken in accordance with, a recovery plan, or a wildlife conservation plan, made or adopted under Division 5 and in force; or

(ba) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7); or

(bb) an action that:

(i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7); and

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(ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration; or

(bc) an action that:

(i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7); and

(ii) is taken in accordance with the bioregional plan to which the declaration relates; or

(c) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering of a cetacean; or

(d) an action that is reasonably necessary to prevent a risk to human health; or

(e) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(f) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(g) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

(ga) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(h) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 245; or

(i) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(j) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

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(k) an action that consists of the transit of a cetacean through a Commonwealth area in circumstances where the cetacean was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (ba), (bb), (bc), (ga), (h), (i) or (j).

Note: A defendant bears an evidential burden in relation to the matters in this section. See subsection 13.3(3) of the *Criminal Code*.

232 Action to be taken on killing etc. cetaceans

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action:

(i) results in the injury or death of a cetacean, or consists of taking a cetacean, in the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters of a State or the Northern Territory for which a declaration under section 228 is in force) or in waters beyond the outer limits of the Australian Whale Sanctuary; or

(ii) consists of treating a cetacean killed, injured or taken in contravention of section 229, 229A, 229B or 229C;

(b) the person's action does not constitute an offence against section 229, 229A, 229B, 229C or 229D;

(c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 231 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 229, 229A, 229B, 229C or 229D.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 241 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

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(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

(a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or

(b) the action is in a class of actions:

(i) that are specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and

(ii) that the agreement or arrangement provides are to be notified to the Secretary by the agency.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:

(a) fails to do an act; and

(b) the failing to do the act results in a contravention of subsection (2).

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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Subdivision E—Miscellaneous offences

236 Offences relating to foreign whaling vessels

(1) The master of a foreign whaling vessel commits an offence if the vessel is brought into a port in Australia or an external Territory and the master has not obtained the written permission of the Minister for the vessel to be brought into the port.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) An offence against subsection (1) is punishable on conviction by a fine not exceeding 500 penalty units.

(4) Subsection (1) does not apply if:

(a) the vessel is brought into the port in accordance with a prescribed agreement between Australia and any other country or countries; or

(b) the vessel is brought into the port under the direction of a person exercising powers under a law of the Commonwealth or of a State; or

(c) an unforeseen emergency renders it necessary to bring the vessel into the port in order to secure the safety of the vessel or human life.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

(5) In this Act:

foreign whaling vessel means a vessel, other than an Australian vessel, designed, equipped or used for:

(a) killing, taking, treating or carrying cetaceans; or

(b) supporting the operations of a vessel or vessels designed, equipped or used for killing, taking, treating or carrying cetaceans.

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master, in relation to a foreign whaling vessel, means the person (other than a ship's pilot) in charge or command of the vessel.

Subdivision F—Permit system

237 Application for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 238.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:
  (a) details of the application; and
  (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

238 Minister may issue permits

(1) Subject to subsections (3) to (4), the Minister may, on application by a person under section 237, issue a permit to the person.

(2) A permit authorises its holder to take an action specified in the permit without breaching sections 229, 229A, 229B, 229C, 229D and 230.

(3) The Minister must not issue the permit unless satisfied that:
  (a) the specified action will contribute significantly to the conservation of cetaceans; or

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(b) if the specified action will interfere with cetaceans, the interference is incidental to, and not the purpose of, the taking of the action and:
  (i) the taking of the action will not adversely affect the conservation status of a species of cetacean or a population of that species; and
  (ii) the taking of the action is not inconsistent with a recovery plan or wildlife conservation plan that is in force for a species of cetacean; and
  (iii) the holder of the permit will take all reasonable steps to minimise the interference with cetaceans; or

(c) the specified action is whale watching (other than whale watching covered by paragraph 231(aa)) and:
  (i) the whale watching is carried out in accordance with the regulations (if any) made for the purposes of this section; or
  (ii) the whale watching will not adversely affect the conservation status of a species of cetacean or a population of that species, and is not inconsistent with a recovery plan or wildlife conservation plan that is in force for a species of cetacean.

(3AA) If the specified action would or could relate to a species of cetacean that is a listed threatened species, the Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the species of cetacean.

(3A) In making a decision on the application, the Minister must consider the comments (if any) received:
  (a) in response to the invitation under subsection 237(3) for anyone to give the Minister comments on whether the permit should be issued; and
  (b) within the period specified in the invitation.

(4) The Minister must not grant a permit authorising its holder to kill a cetacean or to take a cetacean for live display.

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(5) In this Act:

whale watching means any activity conducted for the purpose of observing a cetacean, including but not limited to being in the water for the purposes of observing or swimming with a cetacean, or otherwise interacting with a cetacean.

239 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The Minister may, in accordance with the regulations:
(a) vary or revoke a condition of a permit; or
(b) impose further conditions of a permit.

240 Contravening conditions of a permit

The holder of a permit commits an offence punishable upon conviction by a fine not exceeding 300 penalty units if:
(a) he or she does, or fails to do, an act or thing; and
(b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

241 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:
(a) the permit contains a condition permitting the holder to do so; and
(b) the authority is given in accordance with any requirements set out in the condition.

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(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

242 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

243 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:

(a) suspend a permit for a specified period; or

(b) cancel a permit.

243A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Review Tribunal for review of a decision:

(a) to issue or refuse a permit; or

(b) to specify, vary or revoke a condition of a permit; or

(c) to impose a further condition of a permit; or

(d) to transfer or refuse to transfer a permit; or

(e) to suspend or cancel a permit.

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(2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

244 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

(a) the grant or the transfer of a permit;

(b) the variation or revocation of a condition of a permit;

(c) the imposition of a further condition of a permit.

Subdivision G—Miscellaneous

245 Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:

(a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

(b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or

(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:

(i) made by a State or self-governing Territory; and

(ii) in force under a law of the State or self-governing Territory; or

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

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if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and

(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

246 Vesting of whales in Commonwealth

(1) If:

(a) a cetacean is:

(i) in the Australian Whale Sanctuary, other than the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force; or

(ii) in waters beyond the outer limits of the Australian Whale Sanctuary; and

(a) a person kills, injures or takes the cetacean, whether or not in contravention of this Division;

the cetacean vests, by force of this section, in the Commonwealth.

(2) The Commonwealth is not liable in any action, suit or proceedings in respect of any matter relating to a cetacean at any time before the taking of possession of the cetacean by the Commonwealth.

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247 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of cetaceans killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which cetaceans may be killed, taken or interfered with otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to cetaceans; and

(d) provide for the protection and conservation of cetaceans; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.

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Division 4—Listed marine species

Subdivision A—Listing

248 Listed marine species

(1) The Minister must, by legislative instrument, establish a list of marine species for the purposes of this Part.

(2) The list, as first established, must contain only the following:
  (a) all species in the Family Hydrophiidae (sea-snakes);
  (b) all species in the Family Laticaudidae (sea-snakes);
  (c) all species in the Family Otariidae (eared seals);
  (d) all species in the Family Phocidae ("true" seals);
  (e) all species in the Genus *Crocodylus* (crocodiles);
  (f) all species in the Genus *Dugong* (dugong);
  (g) all species in the Family Cheloniidae (marine turtles);
  (h) the species *Dermochelys coriacea* (leatherback turtles);
  (i) all species in the Family Syngnathidae (seahorses, sea-dragons and pipefish);
  (j) all species in the Family Solenostomidae (ghost pipefish);
  (k) all species in the Class Aves (birds) that occur naturally in Commonwealth marine areas.

(3) The Minister must establish the list within 30 days after the commencement of this Act.

(4) The Minister must cause a notice summarising the information contained in the instrument to be published in accordance with the regulations (if any).

249 Minister may amend list

(1) Subject to this Subdivision, the Minister may, by legislative instrument, amend the list by:
  (a) including or deleting items from the list; or

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(b) correcting an inaccuracy or updating the name of a marine species.

(2) Amendments of a list that delete items from the list take effect on the first day the amendments are no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.

(3) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (1)(b) of this section applies.

(4) When an instrument is laid before each House of the Parliament in accordance with Part 2 of Chapter 3 of the *Legislation Act 2003*, the Minister must cause a statement to be laid before each House with the instrument explaining:

(a) in the case of an item that has been included in the list by the instrument—why the item was so included; or

(b) in the case of an item that has been deleted from the list by the instrument—why the item was so deleted.

(5) The Minister must cause a notice summarising the information contained in an amendment under subsection (1) to be published in accordance with the regulations (if any).

250 Adding marine species to the list

(1) The Minister must not add a marine species to the list unless:

(a) the Minister is satisfied that it is necessary to include the species in the list in order to ensure the long-term conservation of the species; and

(b) the species occurs naturally in a Commonwealth marine area.

(2) Before adding a marine species to the list, the Minister must consult with each Minister who has an interest in a Commonwealth marine area where the species occurs naturally.

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251 Minister must consider advice from Scientific Committee

(1) In deciding whether to add an item to, or delete an item from, the list, the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the scientific aspects of the addition or deletion of the item concerned.

(2) The Minister must:

(a) decide whether to add an item to, or delete an item from, the list; and

(b) if the Minister decides to add or delete the item—amend the list accordingly under subsection 249(1);

within 90 days after receiving the Scientific Committee's advice on the addition or deletion of the item.

(3) A member of the Scientific Committee has a duty not to disclose to any other person the advice, or any information relating to the advice, before the end of that period of 90 days unless the disclosure:

(a) is for the official purposes of the Scientific Committee; or

(b) relates to an addition or deletion included in an amendment of the list that has already been registered as a legislative instrument under the *Legislation Act 2003*.

Note: Amendments of the list to add or delete an item are legislative instruments (see section 249).

252 Minister to make lists available to the public

The Minister must, in accordance with the regulations (if any), make copies of up-to-date lists available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

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Subdivision B—Permit system

253 Subdivision does not apply to members of certain species and cetaceans

This Subdivision does not apply to a member of a listed marine species that is a member of a listed migratory species, a member of a listed threatened species or a cetacean.

254 Killing or injuring member of listed marine species

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a species; and

(c) the member is a member of a listed marine species; and

(d) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

254A Strict liability for killing or injuring member of listed marine species

(1) A person commits an offence if:

(a) the person takes an action; and

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(b) the action results in the death or injury of a member of a marine species; and
(c) the member is a member of a listed marine species; and
(d) the member is in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—1,500 penalty units;
(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

254B Taking etc. member of listed marine species

(1) A person commits an offence if:
(a) the person takes, trades, keeps or moves a member of a species; and
(b) the member is a member of a listed marine species; and
(c) the member is in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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254C Strict liability for taking etc. member of listed marine species

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a marine species; and

(b) the member is a member of a listed marine species; and

(c) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

254D Trading etc. member of listed marine species taken in Commonwealth area

(1) A person commits an offence if:

(a) the person trades, keeps or moves a member of a species; and

(b) the member is a member of a listed marine species; and

(c) the member has been taken in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

254E Strict liability for trading etc. member of listed marine species taken in Commonwealth area

(1) A person commits an offence if:

(a) the person trades, keeps or moves a member of a marine species; and

(b) the member is a member of a listed marine species; and

(c) the member has been taken in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

254F Aggravated offence—member of listed marine species that is a dugong or turtle

(1) For the purposes of this Subdivision, an offence against section 254, 254A, 254B, 254C, 254D or 254E (the ***underlying offence***) is an ***aggravated offence*** if the member to which the underlying offence relates is a member of a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are the listed marine species mentioned in paragraphs 248(2)(f), (g) and (h).

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

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(3) Strict liability applies to the physical element of circumstance, that the member is a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

255 Certain actions are not offences

Sections 254, 254A, 254B, 254C, 254D and 254E do not apply to:

(a) an action authorised by a permit that was issued under section 258 and is in force; or

(b) an action provided for by, and taken in accordance with, a wildlife conservation plan made under Division 5 and in force; or

(c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4); or

(d) an action that:

(i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4); and

(ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration; or

(da) an action that:

(i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4); and

(ii) is taken in accordance with the bioregional plan to which the declaration relates; or

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(db) in the case of sections 254B, 254C, 254D and 254E—an action that is trading, keeping or moving a member of a listed marine species, if:

(i) when the member of the species was taken, the species was not a listed marine species; and

(ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed marine species; or

(e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by an animal; or

(f) an action that is reasonably necessary to prevent a risk to human health; or

(g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

(j) an action taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 265; or

(l) an action, to the extent that it is covered by subsection 517A(7); or

(m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

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(i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and

(ii) is in force; or

(p) an action that is taken in accordance with a permit that:

(i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and

(ii) is in force; or

(q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (l), (m), (n), (o) or (p).

Note: A defendant bears an evidential burden in relation to the matters in this section. See subsection 13.3(3) of the *Criminal Code*.

256 Failing to notify taking etc. of listed marine wildlife

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action either:

(i) results in the death or injury of a member of a listed marine species that is in or on a Commonwealth area; or

(ii) consists of, or involves, trading, taking, keeping or moving a member of a listed marine species that is in or on a Commonwealth area;

(b) the person's action does not constitute an offence against section 254, 254A, 254B, 254C, 254D or 254E, otherwise than because of paragraph 255(db);

(c) the person's action is not an action that the person was authorised by a permit to take.

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Note 1: Section 255 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 254, 254A, 254B, 254C, 254D or 254E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 261 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

(a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or

(b) the action is in a class of actions:

(i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and

(ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if a person:

(a) fails to do an act; and

(b) the failing to do the act results in a contravention of subsection (2).

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Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

257 Application for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 258.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:

(a) details of the application; and

(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

258 Minister may issue permits

(1) Subject to subsection (3), the Minister may, on application by a person under section 257, issue a permit to the person.

(2) A permit authorises its holder to take the actions specified in the permit without breaching section 254, 254A, 254B, 254C, 254D or 254E.

(3) The Minister must not issue the permit unless satisfied that:

(a) the specified action will significantly contribute to the conservation of the listed marine species concerned or other listed marine species; or

(b) the impact of the specified action on a member of the listed marine species concerned is incidental to, and not the purpose of, the taking of the action and:

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(i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and

(ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and

(iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or

(c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed marine species concerned; or

(d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed marine species concerned.

(4) In making a decision on the application, the Minister must consider the comments (if any) received:

(a) in response to the invitation under subsection 257(3) for anyone to give the Minister comments on whether the permit should be issued; and

(b) within the period specified in the invitation.

259 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The Minister may, in accordance with the regulations:

(a) vary or revoke a condition of a permit; or

(b) impose further conditions of a permit.

260 Contravening conditions of a permit

The holder of a permit commits an offence punishable upon conviction by a fine not exceeding 300 penalty units if:

(a) he or she does, or fails to do, an act or thing; and

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(b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

261 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:
   (a) the permit contains a condition permitting the holder to do so; and
   (b) the authority is given in accordance with any requirements set out in the condition.

(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

262 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

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263 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:

(a) suspend a permit for a specified period; or

(b) cancel a permit.

263A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Review Tribunal for review of a decision:

(a) to issue or refuse a permit; or

(b) to specify, vary or revoke a condition of a permit; or

(c) to impose a further condition of a permit; or

(d) to transfer or refuse to transfer a permit; or

(e) to suspend or cancel a permit.

(2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

264 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

(a) the grant or the transfer of a permit;

(b) the variation or revocation of a condition of a permit;

(c) the imposition of a further condition of a permit.

Subdivision C—Miscellaneous

265 Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:

(a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

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(b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or

(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:

(i) made by a State or self-governing Territory; and

(ii) in force under a law of the State or self-governing Territory; or

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of the fishing; and

(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

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266 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of members of listed marine species killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which members of listed marine species may be killed or taken otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to listed marine species; and

(d) provide for the protection and conservation of listed marine species; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.

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Environment Protection and Biodiversity Conservation Act 1999

No. 91, 1999

Compilation No. 64

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This compilation is in 2 volumes

Volume 1: sections 1–266
Volume 2: sections 266B–528
Schedule
Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Environment Protection and Biodiversity Conservation Act 1999* that shows the text of the law as amended and in force on 28 March 2025 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Chapter 5—Conservation of biodiversity and heritage

Part 13—Species and communities

Division 5—Conservation advice, recovery plans, threat abatement plans and wildlife conservation plans

Subdivision AA—Approved conservation advice

266B Approved conservation advice for listed threatened species and listed threatened ecological communities

Minister to ensure there is approved conservation advice

(1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extinct or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species or community continues to be listed.

(2) For this purpose, ***approved conservation advice*** is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains:

(a) a statement that sets out:

(i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and

(ii) the main factors that are the cause of it being so eligible; and

(b) either:

(i) information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or

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(ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community.

Changing approved conservation advice

(3) The Minister may, in writing, approve changes to approved conservation advice.

Consultation with Scientific Committee

(4) If the Minister proposes to approve a document as approved conservation advice, the Minister must consult the Scientific Committee about the document, unless its content is substantially the same as material that the Committee has previously provided to the Minister.

(5) If the Minister proposes to approve a change to approved conservation advice, the Minister must consult the Scientific Committee about the change, unless the change is substantially the same as a change that the Scientific Committee has previously advised the Minister should be made.

Publication requirements

(6) If the Minister approves a document as approved conservation advice, the Minister must:
(a) within 10 days of the approval of the document, publish the approved conservation advice on the internet; and
(b) comply with any other publication requirements of the regulations.

(7) If the Minister approves a change to approved conservation advice, the Minister must:
(a) within 10 days of the approval of the change, publish the advice, as changed, on the internet; and
(b) comply with any other publication requirements of the regulations.

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Instruments of approval are not legislative instruments

(8) An instrument of approval under subsection (2) or (3) is not a legislative instrument.

Subdivision A—Recovery plans and threat abatement plans

267 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

> Recovery plans for listed threatened species and ecological communities and threat abatement plans for key threatening processes bind the Commonwealth and Commonwealth agencies.
>
> The Minister need ensure that a recovery plan is in force for a listed threatened species or ecological community only if the Minister decides to have a recovery plan. The Minister must decide whether to have a recovery plan for the species or community within 90 days after it becomes listed. The Minister may, at any other time, decide whether to have such a plan.
>
> The Minister need ensure a threat abatement plan is in force for a key threatening process only if the Minister decides that a plan is a feasible, effective and efficient way of abating the process. The Minister must consult before making such a decision.
>
> A recovery plan or threat abatement plan can be made by the Minister alone or jointly with relevant States and Territories, or the Minister can adopt a State or Territory plan. There must be public consultation and advice from the Scientific Committee about the plan, regardless of how it is made or adopted.

268 Compliance with recovery plans and threat abatement plans

A Commonwealth agency must not take any action that contravenes a recovery plan or a threat abatement plan.

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269 Implementing recovery and threat abatement plans

(1) Subject to subsection (2), the Commonwealth must implement a recovery plan or threat abatement plan to the extent to which it applies in Commonwealth areas.

(2) If a recovery plan or a threat abatement plan applies outside Commonwealth areas in a particular State or self-governing Territory, the Commonwealth must seek the co-operation of the State or Territory with a view to implementing the plan jointly with the State or Territory to the extent to which the plan applies in the State or Territory.

269AA Decision whether to have a recovery plan

Minister has an initial obligation and then a discretion

(1) The Minister must decide whether to have a recovery plan for a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community within 90 days after the species or community becomes listed. The Minister may, at any other time, decide whether to have a recovery plan for the species or community.

(2) In this section:

(a) the decision that the Minister is required by subsection (1) to make in relation to the species or community within the 90 day period referred to in that subsection is the ***initial recovery plan decision***; and

(b) any subsequent decision that the Minister makes under subsection (1) in relation to the species or community is a ***subsequent recovery plan decision***.

Making the initial recovery plan decision

(3) In making the initial recovery plan decision, the Minister must have regard to the recommendation (the ***initial recommendation***) made by the Scientific Committee as mentioned in paragraph 189(1B)(c) in relation to the species or community.

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Making a subsequent recovery plan decision (unless subsection (5) applies)

(4) In making a subsequent recovery plan decision in relation to the species or community, other than a decision to which subsection (5) applies:
  (a) the Minister must have regard to the initial recommendation in relation to the species or community; and
  (b) the Minister must have regard to any advice subsequently provided to the Minister by the Scientific Committee about whether there should be a recovery plan for the species or community.

Changing from a decision to have a recovery plan to a decision not to have a recovery plan—additional requirements

(5) If, at a time when a decision to have a recovery plan for the species or community is in force (whether or not the plan has yet been made), the Minister is proposing to make a subsequent recovery plan decision that there should not be a recovery plan for the species or community:
  (a) the Minister must ask the Scientific Committee for advice relating to the proposed decision; and
  (b) the Minister must publish a notice inviting comments on the proposed decision in accordance with subsection (7); and
  (c) the Minister must, in deciding whether to make the proposed decision, take account of:
    (i) any advice provided by the Scientific Committee in relation to the proposed decision; and
    (ii) subject to subsection (6), the comments the Minister receives in response to the notice referred to in paragraph (b).

(6) The Minister is not required to take a comment referred to in subparagraph (5)(c)(ii) into account if:
  (a) the Minister does not receive the comment until after the cut-off date specified in the notice under paragraph (5)(b); or

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(b) the Minister considers that regulations referred to in paragraph (8)(b) have not been complied with in relation to the comment.

(7) The notice referred to in paragraph (5)(b):

(a) must be published in accordance with the regulations referred to in paragraph (8)(a); and

(b) must set out the decision the Minister proposed to make; and

(c) must invite people to make comments, to the Minister, about the proposed decision; and

(d) must specify the date (the ***cut-off date***) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and

(e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (8)(b), apply to making comments; and

(f) may also include any other information that the Minister considers appropriate.

(8) The regulations must provide for the following:

(a) how a notice referred to in paragraph (5)(b) is to be published;

(b) the manner and form for making comments.

General publication requirements

(9) The Minister must publish the following:

(a) the Minister's initial recovery plan decision, and the reasons for it;

(b) each subsequent recovery plan decision (if any), and the reasons for it.

The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way that the Minister considers appropriate.

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Note: This subsection must be complied with, even if the Minister has already published notice of the proposed decision in accordance with subsections (5) and (7).

Decisions not legislative instruments

(10) An instrument making a decision under subsection (1) is not a legislative instrument.

269A Making or adopting a recovery plan

Application

(1) This section applies only if the Minister's most recent decision under section 269AA in relation to a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community is to have a recovery plan for the species or community.

Note: Subsection 273(1) sets a deadline of 3 years from the decision for ensuring that a recovery plan is in force for the species or community. Subsection 273(2) allows that period to be extended.

Making a plan

(2) The Minister may make a written recovery plan for the purposes of the protection, conservation and management of:

(a) a listed threatened species (except one that is extinct or is a conservation dependent species); or

(b) a listed threatened ecological community.

Making a plan jointly with a State or Territory

(3) The Minister may make a written recovery plan for the purposes of the protection, conservation and management of a listed threatened species (except one that is extinct or is a conservation dependent species) or a listed threatened ecological community jointly with one or more of the States and self-governing Territories in which the species or community occurs, or with agencies of one or more of those States and Territories.

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Content of a plan

(4) The Minister must not make a recovery plan under subsection (2) or (3) unless the plan meets the requirements of section 270.

Prerequisites to making a plan

(5) Before making a recovery plan under subsection (2) or (3) for a listed threatened species or listed threatened ecological community, the Minister must:

(a) consult the appropriate Minister of each State and self-governing Territory in which the species or community occurs, and in which actions that the plan would provide for would occur, with a view to:

(i) taking the views of each of those States and Territories into account in making the plan under subsection (2); or

(ii) making the plan jointly under subsection (3);

unless the species or community occurs only in a Commonwealth area; and

(b) consider the advice of the Scientific Committee given under section 274; and

(c) consult about the plan and consider comments in accordance with sections 275 and 276.

Limits on making a plan

(6) The Minister must not make a recovery plan under subsection (2) for a species or ecological community that occurs wholly or partly outside a Commonwealth area unless the Minister is satisfied that it is not reasonably practicable, within the period of 3 years referred to in subsection 273(1), to make the plan under subsection (3) of this section with each State or Territory:

(a) in which the species or community occurs; and

(b) in which actions that the plan would provide for would occur, if the plan were made under subsection (2) of this section.

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Adopting a State or Territory plan

(7) The Minister may, by instrument in writing, adopt as a recovery plan a plan made by a State, a self-governing Territory or an agency of a State or self-governing Territory (whether or not the plan is in force in the State or Territory). The Minister may adopt the plan with such modifications as are specified in the instrument. This subsection has effect subject to section 277.

Note: Section 277 requires that:
(a) an adopted plan have the content required for a recovery plan by section 270; and
(b) there has been adequate consultation in making the plan adopted; and
(c) the Minister consult the Scientific Committee about the content of the plan.

Effect of adopting a plan

(8) A plan adopted under subsection (7) has effect as if it had been made under subsection (2) (whether it was adopted with modifications or not).

270 Content of recovery plans

(1) A recovery plan must provide for the research and management actions necessary to stop the decline of, and support the recovery of, the listed threatened species or listed threatened ecological community concerned so that its chances of long-term survival in nature are maximised.

(2) In particular, a recovery plan must (subject to subsection (2A)):
(a) state the objectives to be achieved (for example, removing a species or community from a list, or indefinite protection of existing populations of a species or community); and
(b) state criteria against which achievement of the objectives is to be measured (for example, a specified number and distribution of viable populations of a species or community, or the abatement of threats to a species or community); and
(c) specify the actions needed to achieve the objectives; and

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(ca) identify threats to the species or community; and

(d) identify the habitats that are critical to the survival of the species or community concerned and the actions needed to protect those habitats; and

(e) identify any populations of the species or community concerned that are under particular pressure of survival and the actions needed to protect those populations; and

(f) state the estimated duration and cost of the recovery process; and

(g) identify:

(i) interests that will be affected by the plan's implementation; and

(ii) organisations or persons who will be involved in evaluating the performance of the recovery plan; and

(h) specify any major benefits to native species or ecological communities (other than those to which the plan relates) that will be affected by the plan's implementation; and

(j) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).

(2A) A recovery plan need only address the matters mentioned in paragraphs (2)(d), (e), (f), (g) and (h) to the extent to which it is practicable to do so.

(3) In making a recovery plan, regard must be had to:

(a) the objects of this Act; and

(b) the most efficient and effective use of the resources that are allocated for the conservation of species and ecological communities; and

(c) minimising any significant adverse social and economic impacts, consistently with the principles of ecologically sustainable development; and

(d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the species or ecological community to which the plan relates; and

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(e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

270A Decision whether to have a threat abatement plan

Decision

(1) The Minister may at any time decide whether to have a threat abatement plan for a threatening process in the list of key threatening processes established under section 183. The Minister must do so:

(a) within 90 days of the threatening process being included in the list; and

(b) within 5 years of the last decision whether to have a threat abatement plan for the process, if that decision was not to have a threat abatement plan for the process.

Basis for decision

(2) The Minister must decide to have a threat abatement plan for the process if he or she believes that having and implementing a threat abatement plan is a feasible, effective and efficient way to abate the process. The Minister must decide not to have a threat abatement plan if he or she does not believe that.

Consultation before making a decision

(3) Before making a decision under this section, the Minister must:

(a) request the Scientific Committee to give advice within a specified period; and

(b) take reasonable steps to request any Commonwealth agency, any State, any self-governing Territory, and any agency of a State or self-governing Territory, that would be affected by or interested in abatement of the process to give advice within a specified period;

on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process.

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Consulting others

(4) Subsection (3) does not prevent the Minister from requesting any other person or body to give advice within a specified period on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process.

Request may be made before listing

(5) A request for advice on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process may be made before or after the process is included in the list of key threatening processes established under section 183.

Time for giving advice

(6) The Minister must not make a decision whether to have a threat abatement plan for the process before the end of the period within which he or she has requested a person or body to give advice on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process.

Considering views expressed in consultation

(7) When the Minister is making a decision under this section, he or she must consider the advice that a person or body gave on request within the period specified in the request.

Publishing decision and reasons

(8) The Minister must publish in accordance with the regulations (if any):
  (a) a decision whether or not to have a threat abatement plan for a key threatening process; and
  (b) the Minister's reasons for the decision.

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Special rules for processes included in original list

(9) Subsections (3), (4), (5), (6) and (7) do not apply in relation to a decision about a process included in the list under section 183 as first established.

270B Making or adopting a threat abatement plan

Application

(1) This section applies only if the Minister's most recent decision under section 270A in relation to a key threatening process is to have a threat abatement plan for the process.

Note: Section 273 sets a deadline of 3 years from the decision for ensuring that a threat abatement plan is in force for the process.

Making a plan

(2) The Minister may make a written threat abatement plan for the purposes of reducing the effect of the process.

Making a plan jointly with a State or Territory

(3) The Minister may make a written threat abatement plan for the purposes of reducing the effect of the process, jointly with the States and self-governing Territories in which the process occurs or with agencies of those States and Territories.

Content of a plan

(4) The Minister must not make a threat abatement plan under subsection (2) or (3) unless the plan meets the requirements of section 271.

Prerequisites to making a plan

(5) Before making a threat abatement plan for the process under subsection (2) or (3), the Minister must:

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(a) consult the appropriate Minister of each State and self-governing Territory in which the process occurs, with a view to:
  (i) taking the views of each of those States and Territories into account in making the plan under subsection (2); or
  (ii) making the plan jointly under subsection (3);
unless the process occurs only in a Commonwealth area; and
(b) consider the advice of the Scientific Committee given under section 274; and
(c) consult about the plan and consider comments in accordance with sections 275 and 276.

Limits on making a plan

(6) The Minister must not make a threat abatement plan under subsection (2) for a process that occurs wholly or partly outside a Commonwealth area unless the Minister is satisfied that it is not reasonably practicable to make the plan:
(a) jointly with each of the States and self-governing Territories in which the process occurs; and
(b) within 3 years of the decision to have the plan.

Adopting a State or Territory plan

(7) The Minister may, by instrument in writing, adopt as a threat abatement plan for the process a plan made by a State, a self-governing Territory or an agency of a State or self-governing Territory (whether or not the plan is in force in the State or Territory). The Minister may adopt the plan with such modifications as are specified in the instrument. This subsection has effect subject to section 277.

Note: Section 277 requires that:
(a) an adopted plan have the content required for a threat abatement plan by section 271; and
(b) there has been adequate consultation in making the plan adopted; and
(c) the Minister consult the Scientific Committee about the content of the plan.

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Effect of adopting a plan

(8) A plan adopted under subsection (7) has effect as if it had been made under subsection (2), whether it was adopted with modifications or not.

271 Content of threat abatement plans

(1) A threat abatement plan must provide for the research, management and other actions necessary to reduce the key threatening process concerned to an acceptable level in order to maximise the chances of the long-term survival in nature of native species and ecological communities affected by the process.

(2) In particular, a threat abatement plan must:
  (a) state the objectives to be achieved; and
  (b) state criteria against which achievement of the objectives is to be measured; and
  (c) specify the actions needed to achieve the objectives; and
  (g) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).

(3) In making a threat abatement plan, regard must be had to:
  (a) the objects of this Act; and
  (b) the most efficient and effective use of the resources that are allocated for the conservation of species and ecological communities; and
  (c) minimising any significant adverse social and economic impacts consistently with the principles of ecologically sustainable development; and
  (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the species or ecological community threatened by the key threatening process that is the subject of the plan; and
  (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

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(4) A threat abatement plan may:

(a) state the estimated duration and cost of the threat abatement process; and

(b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and

(c) specify any major ecological matters (other than the species or communities threatened by the key threatening process that is the subject of the plan) that will be affected by the plan's implementation.

(5) Subsection (4) does not limit the matters that a threat abatement plan may include.

272 Eradication of non-native species

If:

(a) the actions specified under paragraph 270(2)(c) in a recovery plan, or under paragraph 271(2)(c) in a threat abatement plan, include the eradication of a non-native species; and

(b) the species is threatened in a country in which its native habitat occurs;

the recovery plan, or threat abatement plan, must require the Commonwealth to offer to provide stock of the species to that country before the eradication proceeds.

273 Ensuring plans are in force

When a plan comes into force

(1A) 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 in writing.

Deadline for recovery plan

(1) Subject to subsection (2), a recovery plan for a listed threatened species or a listed threatened ecological community must be made

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and in force within 3 years of the decision under section 269AA to have the plan.

(2) The Minister may, in writing, extend the period within which a recovery plan must be made. Only one extension can be granted for the making of the plan, and the period of the extension must not be more than 3 years.

Ensuring recovery plan is in force

(3) Once the first recovery plan for a listed threatened species or a listed threatened ecological community is in force, the Minister must exercise his or her powers under this Subdivision to ensure that a recovery plan is in force for the species or community until the Minister decides under section 269AA not to have a recovery plan for the species or community.

Note: The Minister may revoke a recovery plan for a listed threatened species or a listed threatened ecological community if the Minister decides under section 269AA not to have a recovery plan for the species or community. See section 283A.

Deadline for threat abatement plan

(4) A threat abatement plan for a key threatening process must be made and in force within 3 years of the decision under section 270A to have the plan.

Ensuring threat abatement plan is in force

(5) Once the first threat abatement plan for a key threatening process is in force, the Minister must exercise his or her powers under this Subdivision to ensure that a threat abatement plan is in force for the process until the Minister decides under section 270A not to have a threat abatement plan for the process.

Note: The Minister may revoke a threat abatement plan for a key threatening process if the Minister decides under section 270A not to have a threat abatement plan for the process. See section 283A.

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274 Scientific Committee to advise on plans

(1) The Minister must obtain and consider the advice of the Scientific Committee on:
  (a) the content of recovery and threat abatement plans; and
  (b) the times within which, and the order in which, such plans should be made.

(2) In giving advice about a recovery plan, the Scientific Committee must take into account the following matters:
  (a) the degree of threat to the survival in nature of the species or ecological community in question;
  (b) the potential for the species or community to recover;
  (c) the genetic distinctiveness of the species or community;
  (d) the importance of the species or community to the ecosystem;
  (e) the value to humanity of the species or community;
  (f) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.

(3) In giving advice about a threat abatement plan, the Scientific Committee must take into account the following matters:
  (a) the degree of threat that the key threatening process in question poses to the survival in nature of species and ecological communities;
  (b) the potential of species and ecological communities so threatened to recover;
  (c) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.

275 Consultation on plans

(1) Before making a recovery plan or threat abatement plan under this Subdivision, the Minister must:
  (a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at

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prescribed places in each State and self-governing territory; and

(b) give a copy of it, together with a notice of a kind referred to in subsection (2), to the Scientific Committee; and

(c) cause the notice to be published:

(i) in the *Gazette*; and

(ii) in a daily newspaper that circulates generally in each State, and self-governing Territory, in which the relevant listed threatened native species, listed threatened ecological community or key threatening process occurs; and

(iii) in any other way required by the regulations (if any).

(2) The notice must:

(a) specify the places where copies of the proposed plan may be purchased; and

(b) invite persons to make written comments about the proposed plan; and

(c) specify:

(i) an address for lodgment of comments; and

(ii) a day by which comments must be made.

(3) The day specified must not be a day occurring within 3 months after the notice is published in the *Gazette*.

276 Consideration of comments

The Minister:

(a) must, in accordance with the regulations (if any), consider all comments on a proposed recovery plan or threat abatement plan made in response to an invitation under section 275; and

(b) may revise the plan to take account of those comments.

277 Adoption of State plans

(1) The Minister must not adopt a plan as a recovery plan or a threat abatement plan under this Subdivision unless:

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(a) the Minister is satisfied that an appropriate level of consultation has been undertaken in making the plan; and
(b) the plan meets the requirements of section 270 or 271, as the case requires.

(2) Before adopting a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

278 Publication of plans

(1) As soon as practicable after the Minister makes or adopts a recovery plan or a threat abatement plan under this Subdivision, the Minister must:
(a) make copies of the plan available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory; and
(b) give notice of the making or adopting of each such plan; and
(c) publish the notice:
(i) in the *Gazette*; and
(ii) in a daily newspaper that circulates generally in each State, and self-governing Territory; and
(iii) in any other way required by the regulations (if any).

(2) The notice must:
(a) state that the Minister has made or adopted the plan; and
(b) specify the day on which the plan comes into force; and
(c) specify the places where copies of the plan may be purchased.

279 Variation of plans by the Minister

(1) The Minister may, at any time, review a recovery plan or threat abatement plan that has been made or adopted under this Subdivision and consider whether a variation of it is necessary.

(2) Each plan must be reviewed by the Minister at intervals of not longer than 5 years.

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(3) If the Minister considers that a variation of a plan is necessary, the Minister may, subject to subsections (4), (5), (6) and (7), vary the plan.

(4) The Minister must not vary a plan, unless the plan, as so varied, continues to meet the requirements of section 270 or 271, as the case requires.

(5) Before varying a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.

(6) If the Minister has made a plan jointly with, or adopted a plan that has been made by, a State or self-governing Territory, or an agency of a State or self-governing Territory, the Minister must seek the co-operation of that State or Territory, or that agency, with a view to varying the plan.

(7) Sections 275, 276 and 278 apply to the variation of a plan in the same way that those sections apply to the making of a recovery plan or threat abatement plan.

280 Variation by a State or Territory of joint plans and plans adopted by the Minister

(1) If a State or self-governing Territory varies a plan that:

(a) the Minister has made jointly with the State or self-governing Territory, or an agency of the State or Territory; or

(b) has been adopted by the Minister as a recovery plan or a threat abatement plan;

the variation is of no effect for the purposes of this Act unless it is approved by the Minister.

(2) Before approving a variation, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.

(3) The Minister must not approve a variation unless satisfied that:

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(a) an appropriate level of consultation was undertaken in varying the plan; and

(b) the plan, as so varied, continues to meet the requirements of section 270 or 271, as the case requires.

(4) If the Minister approves a variation of a plan, the plan has effect as so varied on and after the date of the approval, or such later date as the Minister determines in writing.

(5) Section 278 applies to the variation of a plan in the same way that it applies to the making of a recovery plan or threat abatement plan.

281 Commonwealth assistance

(1) The Commonwealth may give to a State or self-governing Territory, or to an agency of a State or a self-governing Territory, financial assistance, and any other assistance, to make or implement a recovery plan or a threat abatement plan.

(2) The Commonwealth may give to a person (other than a State or a self-governing Territory, or an agency of a State or Territory) financial assistance, and any other assistance, to implement a recovery plan or a threat abatement plan.

(3) The giving of assistance may be made subject to such conditions as the Minister thinks fit. The Minister is to have regard to the advice of the Scientific Committee under section 282 before determining those conditions.

282 Scientific Committee to advise on assistance

(1) The Scientific Committee is to advise the Minister on the conditions (if any) to which the giving of assistance under section 281 should be subject.

(2) In giving advice about assistance for making or implementing a recovery plan, the Scientific Committee must take into account the following matters:

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(a) the degree of threat to the survival in nature of the species or ecological community in question;
(b) the potential for the species or community to recover;
(c) the genetic distinctiveness of the species or community;
(d) the importance of the species or community to the ecosystem;
(e) the value to humanity of the species or community;
(f) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.

(3) In giving advice about assistance for making or implementing a threat abatement plan, the Scientific Committee must take into account the following matters:
(a) the degree of threat that the key threatening process in question poses to the survival in nature of species and ecological communities;
(b) the potential of species and ecological communities so threatened to recover;
(c) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.

283 Plans may cover more than one species etc.

(1) A recovery plan made or adopted under this Subdivision may deal with one or more listed threatened species and/or one or more listed ecological communities.

(2) A threat abatement plan made or adopted under this Subdivision may deal with one or more key threatening processes.

283A Revoking a plan

(1) The Minister may, by legislative instrument:
(a) revoke a recovery plan for a listed threatened species or a listed threatened ecological community if the Minister decides under section 269AA not to have a recovery plan for the species or community; or

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(b) revoke a threat abatement plan for a key threatening process if the Minister decides under section 270A not to have a threat abatement plan for the process.

(2) The Minister must publish in accordance with the regulations (if any):
(a) the instrument revoking the plan; and
(b) the Minister's reasons for revoking the plan.

284 Reports on preparation and implementation of plans

The Secretary must include in each annual report a report on the making and adoption under this Subdivision of each recovery plan and threat abatement plan during the year to which the report relates.

Subdivision B—Wildlife conservation plans

285 Wildlife conservation plans

(1) Subject to this section, the Minister may make, by instrument in writing, and implement a wildlife conservation plan for the purposes of the protection, conservation and management of the following:
(a) a listed migratory species that occurs in Australia or an external Territory;
(b) a listed marine species that occurs in Australia or an external Territory;
(c) a species of cetacean that occurs in the Australian Whale Sanctuary;
(d) a conservation dependent species.

(2) The Minister must not make a wildlife conservation plan for a species that is a listed threatened species (except a conservation dependent species).

(3) Subject to section 292, the Minister may, by instrument in writing, adopt a plan that has been made by a State or a self-governing

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Territory, or by an agency of a State or self-governing Territory, as a wildlife conservation plan. The Minister may adopt a plan with such modifications as are specified in the instrument.

(4) A plan, as modified and adopted under subsection (2), has effect as if the plan had been made by the Minister under subsection (1).

(5) The Minister must seek the co-operation of the States and self-governing Territories in which:

(a) a listed migratory species occurs; or

(b) a listed marine species occurs; or

(c) a species of cetacean occurs; or

(d) a conservation dependent species occurs;

with a view to making and implementing jointly with those States and Territories, or agencies of those States or Territories, a joint wildlife conservation plan unless the species occurs only in a Commonwealth area.

(6) Before making a wildlife conservation plan under subsection (1) or (5), the Minister must:

(a) consider the advice of the Scientific Committee given under section 289; and

(b) consult about the plan in accordance with sections 290 and 291.

(7) A wildlife conservation plan comes into force on the day on which it is made or adopted, or on such later day as the Minister specifies in writing.

286 Acting in accordance with wildlife conservation plans

A Commonwealth agency must take all reasonable steps to act in accordance with a wildlife conservation plan.

287 Content of wildlife conservation plans

(1) A wildlife conservation plan must provide for the research and management actions necessary to support survival of the migratory

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species, marine species, species of cetacean or conservation dependent species concerned.

(2) In particular, a wildlife conservation plan must:
  (a) state the objectives to be achieved; and
  (b) state criteria against which achievement of the objectives is to be measured; and
  (c) specify the actions needed to achieve the objectives; and
  (d) identify the habitats of the species concerned and the actions needed to protect those habitats; and
  (e) identify:
    (i) interests that will be affected by the plan's implementation; and
    (ii) organisations or persons who will be involved in evaluating the performance of the plan; and
  (f) specify any major benefits to migratory species, marine species, species of cetacean or conservation dependent species (other than those to which the plan relates) that will be affected by the plan's implementation; and
  (g) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).

(3) In making a wildlife conservation plan, regard must be had to:
  (a) the objects of this Act; and
  (b) the most efficient and effective use of the resources that are allocated for the conservation of migratory species, marine species, species of cetacean and conservation dependent species; and
  (c) minimising any significant adverse social and economic impacts, consistently with the principles of ecologically sustainable development; and
  (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the migratory species, marine species, species of cetacean or conservation dependent species to which the plan relates; and

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(e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

288 Eradication of non-native species

If:

(a) the actions specified under section 287 in a wildlife conservation plan include the eradication of a non-native species; and

(b) the species is threatened in a country in which its native habitat occurs;

the wildlife conservation plan must require the Commonwealth to offer to provide stock of the species to that country before the eradication proceeds.

289 Scientific Committee to advise on scheduling of plans

(1) The Minister may seek advice from the Scientific Committee on the need for wildlife conservation plans and the order in which they should be made.

(1A) The Scientific Committee may advise the Minister on its own initiative to make a wildlife conservation plan for a specified species described in subsection 285(1).

(2) In giving advice under subsection (1) or (1A), the Scientific Committee must take into account the resources available for making plans.

(3) Before making a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

290 Consultation on plans

(1) Before making a wildlife conservation plan under subsection 285(1) or (5), the Minister must:

(a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at

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prescribed places in each State and self-governing Territory; and

(b) give a copy of it, together with a notice of a kind referred to in subsection (2), to the Scientific Committee; and

(c) cause the notice to be published:

(i) in the *Gazette*; and

(ii) in a daily newspaper that circulates generally in each State, and self-governing Territory; and

(iii) in any other way required by the regulations (if any).

(2) The notice must:

(a) specify the places where copies of the proposed plan may be purchased; and

(b) invite persons to make written comments about the proposed plan; and

(c) specify:

(i) an address for lodgment of comments; and

(ii) a day by which comments must be made.

(3) The day specified must not be a day occurring within 3 months after the notice is published in the *Gazette*.

291 Consideration of comments

The Minister:

(a) must, in accordance with the regulations (if any), consider all comments on a proposed wildlife conservation plan made in response to an invitation under section 290; and

(b) may revise the plan to take account of those comments.

292 Adoption of State plans

(1) The Minister must not adopt a plan as a wildlife conservation plan under subsection 285(3) unless:

(a) the Minister is satisfied that an appropriate level of consultation has been undertaken in making the plan; and

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(b) the plan meets the requirements of section 287.

(2) Before adopting a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

293 Publication, review and variation of plans

(1) As soon as practicable after the Minister makes or adopts a wildlife conservation plan under section 285, the Minister must:
   (a) make copies of the plan available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory; and
   (b) give notice of the making or adoption of each such plan; and
   (c) publish the notice:
      (i) in the *Gazette*; and
      (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory; and
      (iii) in any other way required by the regulations (if any).

(2) The notice must:
   (a) state that the Minister has made or adopted the plan; and
   (b) specify the day on which the plan comes into force; and
   (c) specify the places where copies of the plan may be purchased.

294 Variation of plans by the Minister

(1) The Minister may, at any time, review a wildlife conservation plan that has been made or adopted under section 285 and consider whether a variation of it is necessary.

(2) Each plan must be reviewed by the Minister at intervals of not longer than 5 years.

(3) If the Minister considers that a variation of a plan is necessary, the Minister may, subject to subsections (4), (5), (6) and (7) vary the plan.

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(4) The Minister must not vary a plan, unless the plan, as so varied, continues to meet the requirements of section 287.

(5) Before varying a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.

(6) If the Minister has made a plan jointly with, or adopted a plan that has been made by, a State or self-governing Territory, or an agency of a State or self-governing Territory, the Minister must seek the co-operation of that State or Territory, or that agency, with a view to varying the plan.

(7) Sections 290, 291 and 293 apply to the variation of a plan in the same way that those sections apply to the making of a wildlife conservation plan.

295 Variation by a State or Territory of joint plans and plans adopted by the Minister

(1) If a State or self-governing Territory varies a plan that:
  (a) the Minister has made jointly with the State or self-governing Territory, or an agency of the State or Territory; or
  (b) has been adopted by the Minister as a wildlife conservation plan;

the variation is of no effect for the purposes of this Act unless it is approved by the Minister.

(2) Before approving a variation, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.

(3) The Minister must not approve a variation under subsection (1) unless satisfied:
  (a) an appropriate level of consultation was undertaken in varying the plan; and
  (b) the plan, as so varied, continues to meet the requirements of section 287.

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(4) If the Minister approves a variation of a plan, the plan has effect as so varied on and after the date of the approval, or such later date as the Minister determines in writing.

(5) Section 293 applies to the variation of a plan in the same way that it applies to the making of a wildlife conservation plan.

296 Commonwealth assistance

(1) The Commonwealth may give to a State or self-governing Territory, or to an agency of a State or a self-governing Territory, financial assistance, and any other assistance, to make a wildlife conservation plan.

(2) The Commonwealth may give to a person (other than a State or a self-governing Territory, or an agency of a State or Territory) financial assistance, and any other assistance, to implement a wildlife conservation plan.

(3) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

297 Plans may cover more than one species etc.

A wildlife conservation plan made or adopted under this Subdivision may deal with all or any of the following:

(a) one or more listed migratory species;

(b) one or more listed marine species;

(c) one or more species of cetacean;

(d) one or more conservation dependent species.

298 Reports on preparation and implementation of plans

The Secretary must include in each annual report a report on the making and adoption under section 285 of each wildlife conservation plan during the year to which the report relates.

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Subdivision C—Miscellaneous

299 Wildlife conservation plans cease to have effect

If:

(a) a wildlife conservation plan is in force for all or any of the following:

(i) a listed migratory species;

(ii) a listed marine species;

(iii) a species of cetacean; and

(b) the species becomes a listed threatened species (except a conservation dependent species);

the wildlife conservation plan ceases to have effect in relation to the species on and from the day on which the species becomes a listed threatened species as mentioned in paragraph (b).

300 Document may contain more than one plan

(1) All or any of the plans made under this Division may be included in the same document.

(2) All or any of the plans adopted under this Division may be included in the same instrument of adoption.

300A State and Territory laws not affected

Sections 269A, 270A, 270B, 273 and 285 do not exclude or limit the concurrent operation of a law of a State or self-governing Territory.

300B Assistance from the Scientific Committee

(1) The Minister may, at any time, ask the Scientific Committee to provide the Minister with a statement, information or advice for the purpose of assisting the Minister in the performance or exercise of the Minister's functions or powers under section 266B, 269AA or 270A.

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(2) The Scientific Committee may, at any time, provide the Minister with a statement, information or advice for the purpose of assisting the Minister in the performance or exercise of the Minister's functions or powers under section 266B, 269AA or 270A (whether or not the Committee is acting in response to a request under subsection (1) of this section).

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Division 6—Access to biological resources

301 Control of access to biological resources

(1) The regulations may provide for the control of access to biological resources in Commonwealth areas.

(2) Without limiting subsection (1), the regulations may contain provisions about all or any of the following:

(a) the equitable sharing of the benefits arising from the use of biological resources in Commonwealth areas;

(b) the facilitation of access to such resources;

(c) the right to deny access to such resources;

(d) the granting of access to such resources and the terms and conditions of such access.

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Division 6A—Control of non-native species

301A Regulations for control of non-native species

The regulations may:

(a) provide for the establishment and maintenance of a list of species, other than native species, whose members:
  (i) do or may threaten biodiversity in the Australian jurisdiction; or
  (ii) would be likely to threaten biodiversity in the Australian jurisdiction if they were brought into the Australian jurisdiction; and

(b) regulate or prohibit the bringing into the Australian jurisdiction of members of a species included in the list mentioned in paragraph (a); and

(c) regulate or prohibit trade in members of a species included in the list mentioned in paragraph (a):
  (i) between Australia and another country; or
  (ii) between 2 States; or
  (iii) between 2 Territories; or
  (iv) between a State and a Territory; or
  (v) by a constitutional corporation; and

(d) regulate and prohibit actions:
  (i) involving or affecting members of a species included in the list mentioned in paragraph (a); and
  (ii) whose regulation or prohibition is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries; and

(e) provide for the making and implementation of plans to reduce, eliminate or prevent the impacts of members of species included in the list mentioned in paragraph (a) on biodiversity in the Australian jurisdiction.

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Division 7—Aid for conservation of species in foreign countries

302 Aid for conservation of species in foreign countries

On behalf of the Commonwealth, the Minister may give financial assistance to the governments of foreign countries and organisations in foreign countries to help the recovery and conservation, in those countries, of species covered by international agreements to which Australia is a party.

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Division 8—Miscellaneous

303 Regulations

(1) The regulations may make provision for the conservation of biodiversity in Commonwealth areas.

(2) In particular, the regulations may prohibit or regulate actions affecting a member of a native species in a Commonwealth area. This does not limit subsection (1).

303A Exemptions from this Part

(1) A person proposing to take an action that would contravene a provision of this Part apart from this section may apply in writing to the Minister for an exemption from the provision.

(2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.

(3) The Minister may, by written notice, exempt a specified person from the application of a specified provision of this Part in relation to a specified action.

(4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.

(5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency. This does not limit the matters the Minister may consider.

(6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.

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(7) Within 10 business days after making the notice, the Minister must:
  (a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations; and
  (b) give a copy of the notice to the person specified in the notice.

303AA Conditions relating to accreditation of plans, regimes and policies

(1) This section applies to an accreditation of a plan, regime or policy under section 208A, 222A, 245 or 265.

(2) The Minister may accredit a plan, regime or policy under that section even though he or she considers that the plan, regime or policy should be accredited only:
  (a) during a particular period; or
  (b) while certain circumstances exist; or
  (c) while a certain condition is complied with.

In such a case, the instrument of accreditation is to specify the period, circumstances or condition.

(3) If an accreditation specifies a particular period as mentioned in subsection (2), the accreditation ceases to be in force at the end of that period.

(4) If an accreditation specifies circumstances as mentioned in subsection (2), the Minister must, in writing, revoke the accreditation if he or she is satisfied that those circumstances have ceased to exist.

(5) The Minister may, in writing, vary an accreditation by:
  (a) specifying one or more conditions (or further conditions) to which the accreditation is subject; or
  (b) revoking or varying a condition:
    (i) specified in the instrument of accreditation; or
    (ii) specified under paragraph (a).

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(6) A condition may relate to reporting or monitoring.

(7) The Minister must, in writing, revoke an accreditation if he or she is satisfied that a condition of the accreditation has been contravened.

303AB Amended policies, regimes or plans taken to be accredited

(1) If:

(a) a plan, regime or policy is accredited under section 208A, 222A, 245 or 265; and

(b) the plan, regime or policy is amended, or is proposed to be amended; and

(c) the Minister is satisfied that the amendments are, or will be, minor; and

(d) the Minister is satisfied that the plan, regime or policy as amended meets, or will meet, the requirements of subsection 208A(1), 222A(1), 245(1) or 265(1) (as the case may be);

the Minister may, by instrument in writing, determine that this subsection applies to the amendments.

(2) If the Minister makes a determination under subsection (1), the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection 208A(1), 222A(2), 245(1) or 265(1) (as the case may be).

(3) A determination under subsection (1) of this section is not a legislative instrument.

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Part 13A—International movement of wildlife specimens

Division 1—Introduction

303BA Objects of Part

(1) The objects of this Part are as follows:

(a) to ensure that Australia complies with its obligations under CITES and the Biodiversity Convention;

(b) to protect wildlife that may be adversely affected by trade;

(c) to promote the conservation of biodiversity in Australia and other countries;

(d) to ensure that any commercial utilisation of Australian native wildlife for the purposes of export is managed in an ecologically sustainable way;

(e) to promote the humane treatment of wildlife;

(f) to ensure ethical conduct during any research associated with the utilisation of wildlife;

(h) to ensure that the precautionary principle is taken into account in making decisions relating to the utilisation of wildlife.

Note: CITES means the Convention on International Trade in Endangered Species—see section 528.

(2) In order to achieve its objects, this Part includes special provisions to conserve the biodiversity of Australian native wildlife.

303BAA Certain indigenous rights not affected

To avoid doubt, nothing in this Part prevents an indigenous person from continuing in accordance with law the traditional use of an area for:

(a) hunting (except for the purposes of sale); or

(b) food gathering (except for the purposes of sale); or

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(c) ceremonial or religious purposes.

303BB Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a system for regulating the international movement of wildlife specimens.
- A ***CITES specimen*** is a specimen of a species included in Appendix I, II or III to the Convention on International Trade in Endangered Species (CITES).
- It is an offence to export or import a ***CITES specimen*** unless:
  (a) the exporter or importer holds a permit; or
  (b) an exemption applies.
- A ***regulated native specimen*** is a specimen of a native species subject to export control under this Part.
- It is an offence to export a ***regulated native specimen*** unless:
  (a) the exporter holds a permit; or
  (b) an exemption applies.
- A ***regulated live specimen*** is a live specimen of a species subject to import control under this Part.
- It is an offence to import a ***regulated live specimen*** unless the importer holds a permit.
- It is an offence to possess a specimen that was imported in contravention of this Part.

303BC Definitions

In this Part, unless the contrary intention appears:

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eligible listed threatened species means a listed threatened species other than a species in the conservation dependent category.

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

export means:

(a) export from Australia or from an external Territory; or

(b) export from the sea;

but does not include:

(c) export from Australia to an external Territory; or

(d) export from an external Territory to Australia; or

(e) export from an external Territory to another external Territory.

export from the sea, in relation to a specimen, means take in a Commonwealth marine area and then take out of that area to another country without bringing into Australia or into an external Territory.

import means:

(a) import into Australia or into an external Territory; or

(b) import by way of introduction from the sea;

but does not include:

(c) import into Australia from an external Territory; or

(d) import into an external Territory from Australia; or

(e) import into an external Territory from another external Territory.

import by way of introduction from the sea, in relation to a specimen, means take in the marine environment not under the jurisdiction of any country and then bring into Australia or into an external Territory without having been imported into any other country.

marine environment means the sea, and includes:

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(a) the air space above the sea; and
(b) the seabed and subsoil beneath the sea.

recipient means:

(a) in relation to a specimen that is exported—the person in the country to which the specimen is exported who is to have the care and custody of the specimen after the export; and
(b) in relation to a specimen that is imported into Australia or into an external Territory—the person in Australia or that Territory, as the case may be, who is to have the care and custody of the specimen after the import.

relevant CITES authority, in relation to a country, means:

(a) if the country is a party to CITES—a Management Authority of that country; or
(b) if the country is not a party to CITES—a competent authority of that country within the meaning of Article X of CITES.

sender, in relation to a specimen that is imported into Australia or an external Territory, means the person in the country from which the specimen is imported who exports it from that country to Australia or to that Territory, as the case may be.

take includes:

(a) in relation to an animal—harvest, catch, capture, trap and kill; and
(b) in relation to a plant specimen—harvest, pick, gather and cut.

trade means trade within the ordinary meaning of that expression.

Note: See also section 528.

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Division 2—CITES species

Subdivision A—CITES species and CITES specimens

303CA Listing of CITES species

(1) The Minister must, by legislative instrument, establish a list of CITES species for the purposes of this Act.

(2) The Minister must ensure that the list is established on the commencement of this section.

Note: See section 4 of the *Acts Interpretation Act 1901*.

(3) The list must include all species from time to time included in any of Appendices I, II and III to CITES. The list must not include any other species.

(4) For each species included in the list, there is to be a notation:
(a) describing the specimens belonging to that species that are included in a particular Appendix to CITES; and
(b) identifying the Appendix in which the species is included; and
(c) identifying the date on which the provisions of CITES first applied to the specimens.

(5) A description mentioned in paragraph (4)(a):
(a) may cover all specimens that belong to the species; or
(b) may cover specified kinds of specimens that belong to the species; or
(c) may state that the inclusion of a specimen in a particular Appendix to CITES is subject to restrictions or conditions.

(6) A restriction or condition mentioned in paragraph (5)(c) may:
(a) impose a quantitative limit in relation to the export or import of a specimen; or
(b) relate to the imposition of a quota in relation to the export or import of specimens; or

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(c) relate to a particular population of a species; or

(d) reflect any other restriction or condition set out in the relevant Appendix to CITES.

(7) Subsection (6) does not limit paragraph (5)(c).

(8) A notation in the list is to be consistent with CITES.

(9) The Minister may, by legislative instrument:

(a) correct an inaccuracy or update the name of a species; or

(b) amend the list, as necessary, so that it includes all species required to be included in the list under subsection (3); or

(c) amend the list, as necessary, so that the notations in the list are consistent with CITES.

(11) For the purposes of this section, it is to be assumed that the definition of ***specimen*** in CITES includes a reference to a thing that is a specimen for the purposes of this Act.

Note: See also section 303CB.

303CB Stricter domestic measures

(1) The Minister may, by legislative instrument, declare that the list referred to in section 303CA has effect as if it were modified as set out in the declaration.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) The Minister must not make a declaration under subsection (1) unless:

(a) the modification has the effect of treating a specified specimen that is included in Appendix II to CITES as if the specimen were included in Appendix I to CITES; or

(b) the modification has the effect of broadening the range of specimens included in a specified Appendix to CITES in relation to a specified species; or

(c) the modification has the effect of decreasing a quantitative limit in relation to the export or import of a specimen; or

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(d) the modification has the effect of treating a specified specimen that is not included in Appendix I, II or III to CITES as if the specimen were included in Appendix I to CITES; or

(e) the modification has the effect of treating a specified specimen that is not included in Appendix I, II or III to CITES as if the specimen were included in Appendix II to CITES.

(5) A reference in this Act to the ***list referred to in section 303CA*** is a reference to that list as modified under this section.

Subdivision B—Offences and permit system

303CC Exports of CITES specimens

(1) A person commits an offence if:

(a) the person exports a specimen; and

(b) the specimen is a CITES specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Authorised export—permit

(2) Subsection (1) does not apply if the specimen is exported in accordance with a permit that was issued under section 303CG, 303GB or 303GC and is in force.

Authorised export—CITES exemptions

(3) Subsection (1) does not apply if the export of the specimen is an export that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.

(4) Subsection (1) does not apply if the Minister issues a certificate under subsection (5) in relation to the specimen.

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(5) If the Minister is satisfied that a specimen was acquired before the provisions of CITES applied to the specimen, the Minister may issue a certificate to that effect.

(6) Subsection (1) does not apply if the export of the specimen is an export that, under the regulations, is taken to be an export of a personal or household effect.

Note 1: See paragraph 3 of Article VII of CITES.

Note 2: The defendant bears an evidential burden in relation to the matters in subsections (2), (3), (4) and (6) (see subsection 13.3(3) of the *Criminal Code*).

303CD Imports of CITES specimens

(1) A person commits an offence if:
(a) the person imports a specimen; and
(b) the specimen is a CITES specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Authorised import—permit

(2) Subsection (1) does not apply if the specimen is imported in accordance with a permit that was issued under section 303CG, 303GB or 303GC and is in force.

Authorised import—CITES exemptions

(3) Subsection (1) does not apply if the import of the specimen is an import that, under the regulations, is taken to be an import of a personal or household effect.

Note: See paragraph 3 of Article VII of CITES.

(4) Subsection (1) does not apply if:
(a) the specimen is a CITES II specimen; and
(b) the specimen is not a live specimen; and

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(c) the specimen belongs to a species that is not specified in the regulations; and

(d) in a case where a quantitative limit is applicable to the specimen under a notation in the list referred to in section 303CA—the quantity of the specimen does not exceed that limit; and

(e) the specimen is within the personal baggage of a person entering Australia or an external Territory; and

(f) the specimen is not intended for sale or for any other commercial purpose; and

(g) both:

(i) the country from which the specimen is proposed to be imported has a relevant CITES authority; and

(ii) permission to export the specimen from that country has been given by a relevant CITES authority of that country.

(5) Subsection (1) does not apply if the import of the specimen is an import that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.

(6) Subsection (1) does not apply if:

(a) the country from which the specimen is proposed to be imported has a relevant CITES authority; and

(b) a relevant CITES authority of that country has issued a certificate under paragraph 2 of Article VII of CITES in respect of the specimen.

Note 1: Paragraph 2 of Article VII of CITES deals with a specimen that was acquired before the provisions of CITES applied to the specimen.

Note 2: The defendant bears an evidential burden in relation to the matters in subsections (2), (3), (4), (5) and (6) (see subsection 13.3(3) of the *Criminal Code*).

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303CE Applications for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303CG.

(2) The application must be accompanied by the fee (if any) prescribed by the regulations.

303CF Further information

(1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.

(2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

303CG Minister may issue permits

(1) The Minister may, on application made by a person under section 303CE, issue a permit to the person. This subsection has effect subject to subsection (3).

(2) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303CC, 303CD, 303DD or 303EK.

(2A) For the purpose of subsection (2), the ***permitted period*** is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 6 months after that date.

(3) The Minister must not issue a permit unless the Minister is satisfied that:

(a) the action or actions specified in the permit will not be detrimental to, or contribute to trade which is detrimental to:

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(i) the survival of any taxon to which the specimen belongs; or

(ii) the recovery in nature of any taxon to which the specimen belongs; or

(iii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and

(b) the specimen was not obtained in contravention of, and the action or actions specified in the permit would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and

(c) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and

(d) if any restriction or condition is applicable to the specimen under a notation in the list referred to in section 303CA—that restriction or condition has been, or is likely to be, complied with; and

(e) if the permit authorises the export of a CITES specimen:

(i) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or

(ii) the relevant conditions set out in the table in section 303CH have been met; and

(f) if the permit authorises the import of a CITES specimen:

(i) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB); or

(ii) the relevant conditions set out in the table in section 303CH have been met; and

(g) if:

(i) the permit authorises the import of a CITES II specimen; and

(ii) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB);

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the country from which the specimen is proposed to be imported has a relevant CITES authority and permission to export the specimen from that country has been given by a relevant CITES authority of that country; and

(h) if the permit authorises the export of a CITES specimen that is a regulated native specimen—the conditions set out in subsection 303DG(4) have been met; and

(i) if the permit authorises the import of a CITES specimen that is a regulated live specimen—the conditions set out in subsection 303EN(3) have been met.

(4) Subsection (3) does not apply in relation to a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be.

(5) The Minister must not issue a permit to export a specimen (other than a live animal) that has been imported into Australia or an external Territory, unless the Minister is satisfied that:

(a) the specimen was lawfully imported (section 303GY); and

(b) if the specimen is a CITES I specimen:

(i) the country to which the specimen is proposed to be exported has a relevant CITES authority; and

(ii) permission to import that specimen into that country has been given by a relevant CITES authority of that country.

(6) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

303CH Specific conditions relating to the export or import of CITES specimens for commercial purposes

(1) The following table sets out the conditions mentioned in paragraphs 303CG(3)(e) and (f):

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Specific conditions

Item	Category of specimen	Action	Specific conditions
1	CITES I	Import	(a) the proposed import would be an import from an approved CITES-registered captive breeding program in accordance with section 303FK; or (b) the specimen is, or is derived from, a plant that was artificially propagated (section 527C).
2	CITES I	Export	(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and (b) the country to which the specimen is proposed to be exported has a relevant CITES authority, and permission to import that specimen into that country has been given by a relevant CITES authority of that country; and (c) the proposed export would be an export from: (i) an approved CITES-registered captive breeding program in accordance with section 303FK; or (ii) an approved artificial propagation program in accordance with section 303FL.

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Specific conditions			
Item	**Category of specimen**	**Action**	**Specific conditions**
3	CITES II	Import	(a) for any specimen—the country from which the specimen is proposed to be imported has a relevant CITES authority and permission to export the specimen from that country has been given by a relevant CITES authority of that country; and (b) for a specimen that: (i) is specified by the Minister under subsection (2) as a declared specimen; and (ii) is not, or is not derived from, an animal that was bred in captivity (section 527B); and (iii) is not, or is not derived from, a plant that was artificially propagated (section 527C); the proposed import of the specimen would be an import from an approved commercial import program in accordance with section 303FU.

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Specific conditions

Item	Category of specimen	Action	Specific conditions
4	CITES II	Export	(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and (b) the proposed export of the specimen would be: (i) an export from an approved captive breeding program in accordance with section 303FK; or (ii) an export from an approved artificial propagation program in accordance with section 303FL; or (iia) an export from an approved cultivation program in accordance with section 303FLA; or (iii) an export in accordance with an approved wildlife trade operation (section 303FN); or (iv) an export in accordance with an approved wildlife trade management plan (section 303FO).
5	CITES III	Import	The country from which the specimen is proposed to be imported has a relevant CITES authority, and permission to export the specimen from that country has been given by a relevant CITES authority of that country.

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Specific conditions			
Item	**Category of specimen**	**Action**	**Specific conditions**
6	CITES III	Export	(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and (b) the proposed export of the specimen would be: (i) an export from an approved captive breeding program in accordance with section 303FK; or (ii) an export from an approved artificial propagation program in accordance with section 303FL; or (iia) an export from an approved cultivation program in accordance with section 303FLA; or (iii) an export in accordance with an approved wildlife trade operation (section 303FN); or (iv) an export in accordance with an approved wildlife trade management plan (section 303FO).

(2) The Minister may, by notifiable instrument, specify a specimen as a declared specimen for the purposes of subparagraph (b)(i) of item 3 of the table in subsection (1).

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunsetting under that Act.

303CI Time limit for making permit decision

If an application for a permit is made under section 303CE, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

(a) the day on which the application is made;

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(b) if a request for further information in relation to the application is made under section 303CF—the day on which the applicant complies with the request;

(c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

303CJ Duration of permits

A permit under section 303CG:

(a) comes into force on the date on which it is issued; and

(b) unless it is sooner cancelled, remains in force until all of the following periods have ended:

(i) the permitted period (within the meaning of subsection 303CG(2A));

(ii) each period for which one or more conditions of the permit are expressed to apply.

303CK Register of applications and decisions

(1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:

(a) prescribed particulars of applications made under section 303CE after the establishment of the register; and

(b) prescribed particulars of decisions made by the Minister under section 303CG after the establishment of the register.

(2) The register may be maintained by electronic means.

(3) The register is to be made available for inspection on the internet.

Subdivision C—Application of CITES

303CL Application of CITES—Management Authority and Scientific Authority

For the purposes of the application of CITES to Australia:

(a) the Minister is the Management Authority; and

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(b) the Secretary is the Scientific Authority.

303CM Interpretation of CITES provisions

(1) Except so far as the contrary intention appears, an expression that:
   (a) is used in the CITES provisions without definition; and
   (b) is used in CITES (whether or not it is defined in, or a particular meaning is assigned to it by, CITES);

has, in the CITES provisions, the same meaning as it has in CITES.

(2) For the purposes of subsection (1), the ***CITES provisions*** consist of:
   (a) this Division; and
   (b) any other provision of this Act in so far as that other provision relates to, or to permits under, this Division.

303CN Resolutions of the Conference of the Parties to CITES

(1) In making a decision under this Part in relation to a CITES specimen, the Minister may have regard to a relevant resolution of the Conference of the Parties under Article XI of CITES.

(2) Subsection (1) applies to a resolution, whether made before or after the commencement of this section.

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Division 3—Exports of regulated native specimens

Subdivision A—Regulated native specimens

303DA Regulated native specimens

For the purposes of this Act, a ***regulated native specimen*** is a specimen that:

(a) is, or is derived from, a native animal or a native plant; and

(b) is not included in the list referred to in section 303DB.

303DB Listing of exempt native specimens

(1) The Minister must, by legislative instrument, establish a list of exempt native specimens.

(2) For each specimen included in the list, there is to be a notation that states whether the inclusion of the specimen in the list is subject to restrictions or conditions and, if so, the nature of those restrictions or conditions.

(3) A restriction or condition mentioned in subsection (2) may:

(a) consist of a quantitative limit in relation to the export of the specimen; or

(b) relate to the circumstances of the export of the specimen; or

(c) relate to the source of the specimen; or

(d) relate to the circumstances in which the specimen was taken or, if the specimen is derived from another specimen that was taken, the circumstances in which the other specimen was taken; or

(e) relate to an expiry date for the inclusion of the specimen on the list.

(4) Subsection (3) does not limit subsection (2).

(5) The list, as first established, must:

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(a) contain the specimens referred to in Part I of Schedule 4 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section; and

(b) reflect the restrictions and conditions that are applicable to the inclusion of those specimens in that Part of that Schedule.

(6) The list must not include a specimen that belongs to an eligible listed threatened species unless:

(a) the Minister is satisfied that the export of the specimen will not:

(i) adversely affect the conservation status of the species concerned; and

(ii) be inconsistent with any recovery plan or wildlife conservation plan for that species; and

(aa) the Minister has had regard to any approved conservation advice for that species; and

(b) the inclusion of the specimen on the list is subject to a restriction or condition to the effect that:

(i) the specimen must be, or be derived from, a plant that was artificially propagated (section 527C); and

(ii) the specimen was propagated in an operation that has derived its stock in a way that did not breach a law of the Commonwealth, a State or a Territory.

303DC Minister may amend list

(1) The Minister may, by legislative instrument, amend the list referred to in section 303DB by:

(a) doing any of the following:

(i) including items in the list;

(ii) deleting items from the list;

(iii) imposing a condition or restriction to which the inclusion of a specimen in the list is subject;

(iv) varying or revoking a condition or restriction to which the inclusion of a specimen in the list is subject; or

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(b) correcting an inaccuracy or updating the name of a species.

(1A) In deciding whether to amend the list referred to in section 303DB to include a specimen derived from a commercial fishery, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.

(1B) Subsection (1A) does not apply to an amendment mentioned in paragraph (1)(b).

(1C) Subsection (1A) does not limit the matters that may be taken into account in deciding whether to amend the list referred to in section 303DB to include a specimen derived from a commercial fishery.

(1D) In this section:

fishery has the same meaning as in section 303FN.

(2) For the purposes of paragraph (1)(b), ***correcting an inaccuracy*** includes ensuring that the list complies with subsection 303DB(5).

(3) Before amending the list referred to in section 303DB as mentioned in paragraph (1)(a) of this section, the Minister:

(a) must consult such other Minister or Ministers as the Minister considers appropriate; and

(b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and

(c) may consult such other persons and organisations as the Minister considers appropriate.

(4) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (1)(b) of this section applies.

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Subdivision B—Offence and permit system

303DD Exports of regulated native specimens

(1) A person commits an offence if:

(a) the person exports a specimen; and

(b) the specimen is a regulated native specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Exemption—permit

(2) Subsection (1) does not apply if the specimen is exported in accordance with a permit that was issued under section 303CG, 303DG, 303GB or 303GC and is in force.

Exemption—accredited wildlife trade management plan

(3) Subsection (1) does not apply if:

(a) the export of the specimen would be an export in accordance with an accredited wildlife trade management plan (section 303FP); and

(b) the specimen is not a live native mammal, a live native reptile, a live native amphibian or a live native bird; and

(ba) either:

(i) the specimen is not a live terrestrial invertebrate, or a live freshwater fish, prescribed by the regulations for the purposes of this subparagraph; or

(ii) the export is an export from an approved aquaculture program in accordance with section 303FM; and

(c) the specimen is not a CITES specimen; and

(d) the specimen does not belong to an eligible listed threatened species.

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Exemption—exchange of scientific specimens

(4) Subsection (1) does not apply if the export of the specimen is an export that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.

Note: The defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

303DE Applications for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303DG.

(2) The application must be accompanied by the fee (if any) prescribed by the regulations.

303DF Further information

(1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.

(2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

303DG Minister may issue permits

(1) The Minister may, on application made by a person under section 303DE, issue a permit to the person. This subsection has effect subject to subsections (3) to (4A).

(2) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303DD.

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(2A) For the purpose of subsection (2), the ***permitted period*** is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 3 years after that date.

(3) The Minister must not issue a permit authorising the export of a live native mammal, a live native reptile, a live native amphibian or a live native bird unless the Minister is satisfied that the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA).

(3A) The Minister must not issue a permit authorising the export of a live terrestrial invertebrate, or a live freshwater fish, prescribed by the regulations for the purposes of paragraph 303DD(3)(ba) unless the Minister is satisfied that:

(a) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or

(b) the proposed export would be an export from an approved aquaculture program in accordance with section 303FM.

(4) The Minister must not issue a permit unless the Minister is satisfied that:

(a) the export of the specimen will not be detrimental to, or contribute to trade which is detrimental to:

(i) the survival of any taxon to which the specimen belongs; or

(ii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and

(b) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and

(c) the specimen was not obtained in contravention of, and the export would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and

(d) if the specimen belongs to an eligible listed threatened species—the export of the specimen is covered by

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subsection (7) or (8), and the export would not be inconsistent with any recovery plan for that species; and

(e) if the specimen does not belong to an eligible listed threatened species:

(i) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or

(ii) the proposed export would be an eligible commercial purpose export (within the meaning of section 303FJ).

(4A) If the Minister is considering whether to issue a permit relating to a specimen that belongs to a particular eligible listed threatened species, the Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the species.

(5) Subsection (4) does not apply in relation to a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be.

(6) The Minister must not issue a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be, unless the Minister is satisfied that the specimen was lawfully imported (section 303GY).

Eligible listed threatened species

(7) This subsection covers the export of a specimen if:

(a) the export of the specimen would be an export from an approved captive breeding program in accordance with section 303FK; or

(b) the export of the specimen would be an export from an approved artificial propagation program in accordance with section 303FL; or

(ba) the export of the specimen would be an export from an approved cultivation program in accordance with section 303FLA; or

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(c) the export of the specimen would be an export from an approved aquaculture program in accordance with section 303FM;

and the export of the specimen will not adversely affect the conservation status of the species concerned.

Note: See also subsection (3).

(8) This subsection covers the export of a specimen if:

(a) the export of the specimen would be an export for the purposes of research in accordance with section 303FC; or

(b) the export of the specimen would be an export for the purposes of education in accordance with section 303FD; or

(c) the export of the specimen would be an export for the purposes of exhibition in accordance with section 303FE; or

(d) the export of the specimen would be an export for the purposes of conservation breeding or propagation in accordance with section 303FF.

Section has effect subject to section 303GA

(9) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

303DH Time limit for making permit decision

If an application for a permit is made under section 303DE, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

(a) the day on which the application is made;

(b) if a request for further information in relation to the application is made under section 303DF—the day on which the applicant complies with the request;

(c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

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303DI Duration of permits

A permit under section 303DG:

(a) comes into force on the date on which it is issued; and

(b) unless it is sooner cancelled, remains in force until all of the following periods have ended:

(i) the permitted period (within the meaning of subsection 303DG(2A));

(ii) each period for which one or more conditions of the permit are expressed to apply.

303DJ Register of applications and decisions

(1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:

(a) prescribed particulars of applications made under section 303DE after the establishment of the register; and

(b) prescribed particulars of decisions made by the Minister under section 303DG after the establishment of the register.

(2) The register may be maintained by electronic means.

(3) The register is to be made available for inspection on the internet.

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Division 4—Imports of regulated live specimens

Subdivision A—Regulated live specimens

303EA Regulated live specimens

For the purposes of this Act, a ***regulated live specimen*** is a specimen that:

(a) is a live animal or a live plant; and

(b) is not included in Part 1 of the list referred to in section 303EB.

303EB Listing of specimens suitable for live import

(1) The Minister must, by legislative instrument, establish a list of specimens that are taken to be suitable for live import.

(2) The list is to be divided into 2 Parts, as follows:

(a) Part 1 is to be a list of unregulated specimens;

(b) Part 2 is to be a list of allowable regulated specimens.

(3) The list may only contain specimens that are live animals or live plants.

(4) Part 1 of the list, as first established, must contain only the specimens referred to in Part I of Schedule 5 or Part I of Schedule 6 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section.

(5) Part 1 of the list must not contain a CITES specimen.

(6) Part 1 of the list is taken to include a live plant the introduction of which into Australia is not inconsistent with the *Biosecurity Act 2015*.

(7) For each specimen included in Part 2 of the list (except a specimen referred to in subsection (11A)), there is to be a notation that states

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whether the inclusion of the specimen in that part of the list is subject to restrictions or conditions and, if so, the nature of those restrictions or conditions.

(8) A restriction or condition referred to in subsection (7) may:
  (a) consist of a quantitative limit in relation to the import of the specimen; or
  (b) relate to the circumstances of the import of the specimen; or
  (c) relate to the source of the specimen; or
  (d) relate to the circumstances in which the specimen was taken.

(9) Subsection (8) does not limit subsection (7).

(10) Part 2 of the list, as first established, must contain only specimens that were, at any time before the commencement of this section, the subject of an import permit granted under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*.

(11) For the purposes of subsection (10), a specimen is taken to have been the subject of an import permit if, and only if, the specimen was identified in the permit at the species or sub-species level.

(11A) Part 2 of the list is taken to include a live plant that is a CITES specimen the introduction of which into Australia is not inconsistent with the *Biosecurity Act 2015*.

303EC Minister may amend list

(1) The Minister may, by legislative instrument, amend the list referred to in section 303EB by:
  (a) doing any of the following:
    (i) including items in a particular part of the list;
    (ii) deleting items from a particular part of the list;
    (iii) imposing a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject;
    (iv) varying or revoking a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject; or

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(b) correcting an inaccuracy or updating the name of a species.

(2) For the purposes of paragraph (1)(b), ***correcting an inaccuracy*** includes ensuring that the list complies with subsections 303EB(4) and (10).

(3) Before amending the list referred to in section 303EB as mentioned in paragraph (1)(a) of this section, the Minister:
(a) must consult such other Minister or Ministers as the Minister considers appropriate; and
(b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and
(c) may consult such other persons and organisations as the Minister considers appropriate.

(5) The Minister must not amend the list referred to in section 303EB by including an item in the list, unless:
(a) the amendment is made following consideration of a relevant report under section 303ED or 303EE; or
(b) the amendment is made following consideration of a relevant review under section 303EJ.

(6) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (1)(b) of this section applies.

Subdivision B—Assessments relating to the amendment of the list of specimens suitable for import

303ED Amendment of list on the Minister's own initiative

(1) The Minister may formulate a proposal for the list referred to in section 303EB to be amended by including an item.

(2) Unless subsection (3) applies, the Minister must:
(a) cause to be conducted an assessment of the potential impacts on the environment of the proposed amendment; and

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(b) cause to be prepared a report on those impacts.

The report must be prepared in accordance with section 303EF and be given to the Minister.

(3) This subsection applies if:

(a) Biosecurity Australia has prepared a report (whether before or after the amendment was proposed) on the potential impacts on the environment if the specimen were to be imported; and

(b) the report is of a type specified in regulations made for the purposes of this paragraph; and

(c) the report is given to the Minister; and

(d) the Minister determines that subsection (2) does not apply to the proposed amendment.

(4) A determination made under paragraph (3)(d) is not a legislative instrument.

303EE Application for amendment of list

(1) A person may, in accordance with the regulations, apply to the Minister for the list referred to in section 303EB to be amended by including an item.

(2) The Minister must not consider the application unless either subsection (3) or (4) applies to the proposed amendment.

(3) This subsection applies to the proposed amendment if:

(a) subsection (4) does not apply to the proposed amendment; and

(b) an assessment is made of the potential impacts on the environment of the proposed amendment; and

(c) a report on those impacts is given to the Minister.

The report must be prepared in accordance with section 303EF.

(4) This subsection applies to the proposed amendment if:

(a) Biosecurity Australia has prepared a report (whether before or after the amendment was proposed) on the potential

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impacts on the environment if the specimen were to be imported; and

(b) the report is of a type specified in regulations made for the purposes of this paragraph; and

(c) the report has been given to the Minister; and

(d) the Minister determines that subsection (3) does not apply to the proposed amendment.

(5) A determination made under paragraph (4)(d) is not a legislative instrument.

303EF Requirement for assessments

(1) The assessment under subsection 303ED(2) or 303EE(3) must provide for:

(a) if the Minister determines that this paragraph applies—the preparation of terms of reference for a report on the relevant impacts; or

(b) if the Minister determines that this paragraph applies—all of the following:

(i) the preparation of draft terms of reference for a report on the relevant impacts;

(ii) the publication of the draft terms of reference for public comment for a period of at least 10 business days that is specified by the Minister;

(iii) the finalisation of the terms of reference, to the Minister's satisfaction, taking into account the comments (if any) received on the draft terms of reference.

(2) The assessment must also provide for:

(a) the preparation of a draft of a report on the relevant impacts; and

(b) the publication of the draft report for public comment for a period of at least 20 business days that is specified by the Minister; and

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(c) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and

(d) any other matter prescribed by the regulations.

(3) A determination made under paragraph (1)(a) or (b) is not a legislative instrument.

303EG Timing of decision about proposed amendment

(1) If the Minister receives a report under section 303ED or 303EE in relation to a proposed amendment, the Minister must decide whether or not to make the proposed amendment within:

(a) 30 business days; or

(b) if the Minister, by writing, specifies a longer period—that longer period;

after the first business day after the day on which the report was received.

Notice of extension of time

(2) If the Minister specifies a longer period for the purposes of subsection (1), he or she must:

(a) if section 303EE applies—give a copy of the specification to the applicant; and

(b) publish the specification in accordance with the regulations.

303EH Requesting further information

(1) If:

(a) section 303EE applies; and

(b) the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to make the proposed amendment;

the Minister may request the applicant to give the Minister, within the period specified in the request, information relevant to making the decision.

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(2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

303EI Notice of refusal of proposed amendment

If section 303EE applies and the Minister refuses to make the proposed amendment, the Minister must give the applicant notice of the refusal.

303EJ Reviews

If, following consideration of a relevant report under section 303ED or 303EE, the Minister has made a decision to include, or refusing to include, an item in the list referred to in section 303EB, the Minister may review that decision at any time during the period of 5 years after the decision was made.

Subdivision C—Offence and permit system

303EK Imports of regulated live specimens

(1) A person commits an offence if:
  (a) the person imports a specimen; and
  (b) the specimen is a regulated live specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Exemption—permit

(2) Subsection (1) does not apply if:
  (a) the specimen is included in Part 2 of the list referred to in section 303EB; and
  (b) the specimen is imported in accordance with a permit that was issued under section 303CG, 303EN, 303GB or 303GC and is in force.

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Exemption—testing permit

(3) Subsection (1) does not apply if the specimen is imported in accordance with a permit that was issued under section 303GD and is in force.

Note: The defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

303EL Applications for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303EN.

(2) The application must be accompanied by the fee (if any) prescribed by the regulations.

303EM Further information

(1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.

(2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

303EN Minister may issue permits

(1) The Minister may, on application made by a person under section 303EL, issue a permit to the person. This subsection has effect subject to subsection (3).

(2) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303EK.

(2A) For the purpose of subsection (2), the ***permitted period*** is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so

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specified must start on the date of issue of the permit and end not later than 3 years after that date.

(3) The Minister must not issue a permit unless the Minister is satisfied that:

(a) the proposed import would not be:

(i) likely to threaten the conservation status of a species or ecological community; or

(ii) likely to threaten biodiversity; and

(b) the specimen is included in Part 2 of the list referred to in section 303EB; and

(c) if any restriction or condition is applicable to the specimen under a notation in Part 2 of the list referred to in section 303EB—that restriction or condition has been, or is likely to be, complied with; and

(d) the specimen was not obtained in contravention of, and the import would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and

(e) if the specimen belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with.

(4) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

303EO Time limit for making permit decision

If an application for a permit is made under section 303EL, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

(a) the day on which the application is made;

(b) if a request for further information in relation to the application is made under section 303EM—the day on which the applicant complies with the request;

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(c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

303EP Duration of permits

A permit under section 303EN:

(a) comes into force on the date on which it is issued; and

(b) unless it is sooner cancelled, remains in force until all of the following periods have ended:

(i) the permitted period (within the meaning of subsection 303EN(2A));

(ii) each period for which one or more conditions of the permit are expressed to apply.

303EQ Register of applications and decisions

(1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:

(a) prescribed particulars of applications made under section 303EL after the establishment of the register; and

(b) prescribed particulars of decisions made by the Minister under section 303EN after the establishment of the register.

(2) The register may be maintained by electronic means.

(3) The register is to be made available for inspection on the internet.

Subdivision D—Marking of certain specimens for the purposes of identification

303ER Object

The object of this Subdivision is:

(a) to comply with Australia's obligations under:

(i) the Biodiversity Convention; and

(ii) CITES; and

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(b) otherwise to further the protection and conservation of the wild fauna and flora of Australia and of other countries;

by requiring the marking of certain live specimens for the purposes of identification.

Note: See Article 8 of the Biodiversity Convention.

303ES Specimens to which Subdivision applies

This Subdivision applies to a regulated live specimen if:

(a) the specimen has been imported in accordance with:
  (i) a permit under this Division; or
  (ii) a permit or authority under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; or

(b) the specimen is the progeny of a specimen referred to in paragraph (a).

303ET Extended meaning of *marking*

A reference in this Subdivision to the ***marking*** of a specimen includes a reference to the following:

(a) in the case of a live plant:
  (i) the marking or labelling of a container in which the plant is kept or in which the plant is growing; and
  (ii) the placement of a label or tag on the plant;

(b) in the case of a live animal:
  (i) the implantation of a scannable device in the animal; and
  (ii) the placement of a band on any part of the animal; and
  (iii) the placement (whether by piercing or otherwise) of a tag or ring on any part of the animal; and
  (iv) the marking or labelling of a container within which the animal is kept.

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303EU Secretary may make determinations about marking of specimens

Determinations

(1) The Secretary may, by legislative instrument, make a determination about the marking of specified kinds of specimens for the purposes of identification.

Matters that may be covered by determination

(2) Without limiting subsection (1), a determination by the Secretary under that subsection may:
  (a) require specimens to be marked; and
  (b) deal with the manner in which specimens are to be marked; and
  (c) deal with the times at which marking is to occur; and
  (d) deal with the removal or destruction of marks; and
  (e) deal with the replacement or modification of marks; and
  (f) require that marking be carried out by persons approved in writing by the Secretary under that determination; and
  (g) deal with the circumstances in which marks may be, or are required to be, rendered useless; and
  (h) in the case of a mark that consists of a label, tag, band or device:
    (i) set out specifications relating to the label, tag, band or device; and
    (ii) require that any destruction or removal of the label, tag, band or device be carried out by a person approved in writing by the Secretary under that determination.

Marking of animals not to involve undue pain etc.

(3) In the case of a live animal, a determination under subsection (1) must not require marking that involves:
  (a) undue pain or distress to the animal; or
  (b) undue risk of the death of the animal.

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Marking of plants not to involve undue risk of death

(4) In the case of a live plant, a determination under subsection (1) must not require marking that involves undue risk of the death of the plant.

303EV Offences

Owner to ensure specimens marked etc.

(1) If a determination under section 303EU applies to a specimen, the owner of the specimen must comply with the determination.

Person not to remove or interfere with mark etc.

(2) A person contravenes this subsection if:
  (a) a specimen is marked in accordance with a determination under section 303EU; and
  (b) the person engages in conduct; and
  (c) the conduct causes the removal of the mark or interference with the mark, or renders the mark unusable.

Offence

(3) A person who contravenes subsection (1) or (2) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.

(4) Subsection (2) does not apply if the person engages in the conduct in accordance with a determination under section 303EU.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

(5) In subsections (1) and (2), strict liability applies to the circumstance that a determination was made under section 303EU.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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303EW This Subdivision does not limit conditions of permits

This Subdivision does not limit section 303GE (which deals with conditions of permits).

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Division 5—Concepts relating to permit criteria

Subdivision A—Non-commercial purpose exports and imports

303FA Eligible non-commercial purpose exports

For the purposes of this Part, the export of a specimen is an ***eligible non-commercial purpose export*** if, and only if:

(a) the export of the specimen would be an export for the purposes of research in accordance with section 303FC; or

(b) the export of the specimen would be an export for the purposes of education in accordance with section 303FD; or

(c) the export of the specimen would be an export for the purposes of exhibition in accordance with section 303FE; or

(d) the export of the specimen would be an export for the purposes of conservation breeding or propagation in accordance with section 303FF; or

(e) the export of the specimen would be an export of a household pet in accordance with section 303FG; or

(f) the export of the specimen would be an export of a personal item in accordance with section 303FH; or

(g) the export of a specimen would be an export for the purposes of a travelling exhibition in accordance with section 303FI.

303FB Eligible non-commercial purpose imports

For the purposes of this Part, the import of a specimen is an ***eligible non-commercial purpose import*** if, and only if:

(a) the import of the specimen would be an import for the purposes of research in accordance with section 303FC; or

(b) the import of the specimen would be an import for the purposes of education in accordance with section 303FD; or

(c) the import of the specimen would be an import for the purposes of exhibition in accordance with section 303FE; or

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(d) the import of the specimen would be an import for the purposes of conservation breeding or propagation in accordance with section 303FF; or

(e) the import of the specimen would be an import of a household pet in accordance with section 303FG; or

(f) the import of the specimen would be an import of a personal item in accordance with section 303FH; or

(g) the import of a specimen would be an import for the purposes of a travelling exhibition in accordance with section 303FI.

303FC Export or import for the purposes of research

(1) The export of a specimen is an export for the purposes of research in accordance with this section if:

(a) the specimen will be used for the purpose of scientific research; and

(b) the objects of the research are covered by any or all of the following subparagraphs:

(i) the acquisition of a better understanding, and/or increased knowledge, of a taxon to which the specimen belongs;

(ii) the conservation of biodiversity;

(iii) the maintenance and/or improvement of human health; and

(c) the export is not primarily for commercial purposes; and

(d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

(2) The import of a specimen is an import for the purposes of research in accordance with this section if:

(a) the specimen will be used for the purpose of scientific research; and

(b) the objects of the research are covered by any or all of the following subparagraphs:

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(i) the acquisition of a better understanding, and/or increased knowledge, of a taxon to which the specimen belongs;
(ii) the conservation of biodiversity;
(iii) the maintenance and/or improvement of human health; and

(c) the import is not primarily for commercial purposes; and
(d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

303FD Export or import for the purposes of education

(1) The export of a specimen is an export for the purposes of education in accordance with this section if:
(a) the specimen will be used for the purpose of education or training; and
(b) the export is not primarily for commercial purposes; and
(c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

(2) The import of a specimen is an import for the purposes of education in accordance with this section if:
(a) the specimen will be used for the purpose of education or training; and
(b) the import is not primarily for commercial purposes; and
(c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

303FE Export or import for the purposes of exhibition

(1) The export of a specimen is an export for the purposes of exhibition in accordance with this section if:
(a) the specimen will be used for the purpose of an exhibition; and
(b) the export is not primarily for commercial purposes; and

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(c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

(2) The import of a specimen is an import for the purposes of exhibition in accordance with this section if:

(a) the specimen will be used for the purpose of an exhibition; and

(b) the import is not primarily for commercial purposes; and

(c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

(3) In this section:

exhibition includes a zoo or menagerie.

303FF Export or import for conservation breeding or propagation

(1) The export of a specimen is an export for the purposes of conservation breeding or propagation in accordance with this section if:

(a) the specimen is a live animal or a live plant; and

(b) the specimen is for use in a program the object of which is the establishment and/or maintenance of a breeding population; and

(c) the program is a program that, under the regulations, is taken to be an approved co-operative conservation program; and

(d) the export is not primarily for commercial purposes; and

(e) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

(2) The import of a specimen is an import for the purposes of conservation breeding or propagation in accordance with this section if:

(a) the specimen is a live animal or a live plant; and

(b) the specimen is for use in a program the object of which is the establishment and/or maintenance of a breeding population; and

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(c) the program is a program that, under the regulations, is taken to be an approved co-operative conservation program; and
(d) the import is not primarily for commercial purposes; and
(e) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

303FG Export or import of household pets

Export of live native animals

(1) The export of a live native animal (other than a CITES specimen) is an export of a household pet in accordance with this section if:
(a) the animal is included in the list referred to in subsection (4); and
(b) the export is not primarily for commercial purposes; and
(c) such other conditions as are specified in the regulations have been, or are likely to be, satisfied.

Export of live CITES specimens

(2) The export of a CITES specimen is an export of a household pet in accordance with this section if:
(a) the specimen is a live animal; and
(b) if the animal is a native animal—the animal is included in the list referred to in subsection (4); and
(c) the export is not primarily for commercial purposes; and
(d) such other conditions as are specified in the regulations have been, or are likely to be, satisfied.

Import of live animals

(3) The import of a live animal is an import of a household pet in accordance with this section if:
(a) the conditions specified in the regulations have been, or are likely to be, satisfied; and
(b) the import is not primarily for commercial purposes; and

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(c) the animal is included in Part 2 of the list referred to in section 303EB.

Listing of native household pet animals

(4) The Minister must, by legislative instrument, establish a list of native household pet animals.

(5) The list, as first established, must contain the animals referred to in Schedule 7 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section.

(6) The Minister may, by legislative instrument, amend the list referred to in subsection (4) by:
(a) including or deleting items from the list; or
(b) correcting an inaccuracy or updating the name of a species.

(7) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (6)(b) of this section applies.

303FH Export or import of personal items

(1) The export of a specimen is an export of a personal item in accordance with this section if:
(a) the specimen is not a live specimen; and
(b) the export is not primarily for commercial purposes; and
(c) the conditions specified in the regulations have been, or are likely to be, satisfied.

(2) The import of a specimen is an import of a personal item in accordance with this section if:
(a) the specimen is not a live specimen; and
(b) the import is not primarily for commercial purposes; and
(c) the conditions specified in the regulations have been, or are likely to be, satisfied.

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303FI Export or import for the purposes of a travelling exhibition

(1) The export of a specimen is an export for the purposes of a travelling exhibition in accordance with this section if:
  (a) the export is not primarily for commercial purposes; and
  (b) the conditions specified in the regulations have been, or are likely to be, satisfied.

(2) The import of a specimen is an import for the purposes of a travelling exhibition in accordance with this section if:
  (a) the import is not primarily for commercial purposes; and
  (b) the conditions specified in the regulations have been, or are likely to be, satisfied.

Subdivision B—Commercial purpose exports and imports

303FJ Eligible commercial purpose exports

For the purposes of this Part, the export of a specimen is an ***eligible commercial purpose export*** if, and only if:
  (a) the export of the specimen would be an export from an approved captive breeding program in accordance with section 303FK; or
  (b) the export of the specimen would be an export from an approved artificial propagation program in accordance with section 303FL; or
  (ba) the export of the specimen would be an export from an approved cultivation program in accordance with section 303FLA; or
  (c) the export of the specimen would be an export from an approved aquaculture program in accordance with section 303FM; or
  (d) the export of the specimen would be an export in accordance with an approved wildlife trade operation (section 303FN); or
  (e) the export of the specimen would be an export in accordance with an approved wildlife trade management plan (section 303FO).

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Note: See also subsection 303DD(3), which deals with accredited wildlife trade management plans.

303FK Export or import from an approved captive breeding program

(1) The export of a specimen is an export from an approved captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved captive breeding program.

(2) The export of a specimen is an export from an approved CITES-registered captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved CITES-registered captive breeding program.

(3) The import of a specimen is an import from an approved CITES-registered captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved CITES-registered captive breeding program.

303FL Export from an approved artificial propagation program

The export of a specimen is an export from an approved artificial propagation program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved artificial propagation program.

303FLA Export from an approved cultivation program

The export of a specimen is an export from an approved cultivation program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved cultivation program.

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303FM Export from an approved aquaculture program

The export of a specimen is an export from an approved aquaculture program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved aquaculture program.

303FN Approved wildlife trade operation

(1) The export of a specimen is an export in accordance with an approved wildlife trade operation if the specimen is, or is derived from, a specimen that was taken in accordance with a wildlife trade operation declared by a declaration in force under subsection (2) to be an approved wildlife trade operation.

(2) The Minister may, by instrument published in the *Gazette*, declare that a specified wildlife trade operation is an ***approved wildlife trade operation*** for the purposes of this section.

(3) The Minister must not declare an operation under subsection (2) unless the Minister is satisfied that:

(a) the operation is consistent with the objects of this Part; and

(b) the operation will not be detrimental to:

(i) the survival of a taxon to which the operation relates; or

(ii) the conservation status of a taxon to which the operation relates; and

(ba) the operation will not be likely to threaten any relevant ecosystem including (but not limited to) any habitat or biodiversity; and

(c) if the operation relates to the taking of live specimens that belong to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimens are likely to be complied with; and

(d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

(4) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:

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(a) the significance of the impact of the operation on an ecosystem (for example, an impact on habitat or biodiversity); and

(b) the effectiveness of the management arrangements for the operation (including monitoring procedures).

(5) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:

(a) whether legislation relating to the protection, conservation or management of the specimens to which the operation relates is in force in the State or Territory concerned; and

(b) whether the legislation applies throughout the State or Territory concerned; and

(c) whether, in the opinion of the Minister, the legislation is effective.

(6) A declaration under subsection (2) ceases to be in force at the beginning of the third anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 3 years is specified in the declaration in accordance with subsection 303FT(4).

(7) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).

(8) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.

(9) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.

(10) For the purposes of this section, an operation is a ***wildlife trade operation*** if, and only if, the operation is an operation for the taking of specimens and:

(a) the operation is an operation that, under the regulations, is taken to be a market-testing operation; or

(b) the operation is an operation that, under the regulations, is taken to be a small-scale operation; or

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(c) the operation is an operation that, under the regulations, is taken to be a developmental operation; or

(d) the operation is a commercial fishery; or

(e) the operation is an operation that, under the regulations, is taken to be a provisional operation; or

(f) the operation is an operation of a kind specified in the regulations.

(10A) In deciding whether to declare that a commercial fishery is an approved wildlife trade operation for the purposes of this section, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.

(10B) Subsection (10A) does not limit the matters that may be taken into account in deciding whether to declare that a fishery is an approved wildlife trade operation for the purposes of this section.

(11) In this section:

fish includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

fishery means a class of activities by way of fishing, including activities identified by reference to all or any of the following:

(a) a species or type of fish;

(b) a description of fish by reference to sex or any other characteristic;

(c) an area of waters or of seabed;

(d) a method of fishing;

(e) a class of vessels;

(f) a class of persons;

(g) a purpose of activities.

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303FO Approved wildlife trade management plan

(1) The export of a specimen is an export in accordance with an approved wildlife trade management plan if the specimen is, or is derived from, a specimen that was taken in accordance with a plan declared by a declaration in force under subsection (2) to be an approved wildlife trade management plan.

(2) The Minister may, by instrument published in the *Gazette*, declare that a specified plan is an ***approved wildlife trade management plan*** for the purposes of this section.

(3) The Minister must not declare a plan under subsection (2) unless the Minister is satisfied that:

(a) the plan is consistent with the objects of this Part; and

(b) there has been an assessment of the environmental impact of the activities covered by the plan, including (but not limited to) an assessment of:

(i) the status of the species to which the plan relates in the wild; and

(ii) the extent of the habitat of the species to which the plan relates; and

(iii) the threats to the species to which the plan relates; and

(iv) the impacts of the activities covered by the plan on the habitat or relevant ecosystems; and

(c) the plan includes management controls directed towards ensuring that the impacts of the activities covered by the plan on:

(i) a taxon to which the plan relates; and

(ii) any taxa that may be affected by activities covered by the plan; and

(iii) any relevant ecosystem (for example, impacts on habitat or biodiversity);

are ecologically sustainable; and

(d) the activities covered by the plan will not be detrimental to:

(i) the survival of a taxon to which the plan relates; or

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(ii) the conservation status of a taxon to which the plan relates; or

(iii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and

(e) the plan includes measures:

(i) to mitigate and/or minimise the environmental impact of the activities covered by the plan; and

(ii) to monitor the environmental impact of the activities covered by the plan; and

(iii) to respond to changes in the environmental impact of the activities covered by the plan; and

(f) if the plan relates to the taking of live specimens that belong to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimens are likely to be complied with; and

(g) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

(4) In deciding whether to declare a plan under subsection (2), the Minister must have regard to:

(a) whether legislation relating to the protection, conservation or management of the specimens to which the plan relates is in force in the State or Territory concerned; and

(b) whether the legislation applies throughout the State or Territory concerned; and

(c) whether, in the opinion of the Minister, the legislation is effective.

(5) A declaration under subsection (2) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection 303FT(4).

(6) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).

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(7) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.

(8) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.

303FP Accredited wildlife trade management plan

(1) The export of a specimen is an export in accordance with an accredited wildlife trade management plan if the specimen is, or is derived from, a specimen that was taken in accordance with a plan declared by a declaration in force under subsection (2) to be an accredited wildlife trade management plan.

(2) The Minister may, by instrument published in the *Gazette*, declare that a specified plan is an ***accredited wildlife trade management plan*** for the purposes of this section.

(3) The Minister must not declare a plan under subsection (2) unless the Minister is satisfied that:

(a) the plan is in force under a law of the Commonwealth or of a State or Territory; and

(b) the conditions set out in subsection 303FO(3) have been met in relation to the plan; and

(c) the plan imposes limits in relation to the taking of specimens; and

(d) the compliance and enforcement measures relating to the plan are likely to be effective in preventing specimens taken in breach of the plan from being traded or exported; and

(e) the plan provides for the monitoring of:

(i) the taking of specimens under the plan; and

(ii) the export of specimens taken under the plan; and

(iii) the status of the species to which the plan relates in the wild; and

(iv) the impacts of the activities under the plan on the habitat of the species to which the plan relates; and

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(f) the plan provides for statistical reports about specimens taken under the plan to be given to the Minister on a regular basis; and

(g) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

(4) A declaration under subsection (2) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection 303FT(4).

(5) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).

(6) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.

(7) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.

(8) The Minister must publish on the internet copies of reports given as mentioned in paragraph (3)(f).

(9) The Minister is not required to comply with subsection (8) to the extent to which compliance could reasonably be expected to:

(a) prejudice substantially the commercial interests of a person; or

(b) be detrimental to:

(i) the survival of a taxon to which the plan relates; or

(ii) the conservation status of a taxon to which the plan relates.

303FQ Consultation with State and Territory agencies

Before making a declaration under section 303FO or 303FP, the Minister must consult a relevant agency of each State and self-governing Territory affected by the declaration.

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303FR Public consultation

(1) Before making a declaration under section 303FN, 303FO or 303FP, the Minister must cause to be published on the internet a notice:
  (a) setting out the proposal to make the declaration; and
  (b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and
  (c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.

(2) A period specified in a notice under subsection (1) must not be shorter than 20 business days after the date on which the notice was published on the internet.

(3) In making a decision about whether to make a declaration under section 303FN, 303FO or 303FP, the Minister must consider any comments about the proposal to make the declaration that were given in response to an invitation under subsection (1).

303FRA Assessments

(1) The regulations may prescribe an assessment process that is to be used for the purposes of sections 303FN, 303FO and 303FP to assess the potential impacts on the environment of:
  (a) a wildlife trade operation; or
  (b) the activities covered by a plan;
where the operation is, or the activities are, likely to have a significant impact on the environment.

(2) If regulations made for the purposes of subsection (1) apply to a wildlife trade operation or to a plan, the Minister must not declare:
  (a) the operation under subsection 303FN(2); or
  (b) the plan under subsection 303FO(2) or 303FP(2);

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unless the assessment process prescribed by those regulations has been followed in relation to the assessment of the operation or plan, as the case may be.

(3) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision for:

(a) the application of Part 8 (except sections 82, 83 and 84) and the other provisions of this Act (so far as they relate to that Part) in relation to the assessment process, subject to such modifications as are specified in the regulations; and

(b) exemptions from the assessment process.

(4) In this section:

wildlife trade operation has the same meaning as in subsection 303FN(10), but does not include an operation mentioned in paragraph 303FN(10)(d).

303FS Register of declarations

(1) The Minister must cause to be maintained a register that sets out declarations made under section 303FN, 303FO or 303FP.

(2) The register may be maintained by electronic means.

(3) The register is to be made available for inspection on the internet.

303FT Additional provisions relating to declarations

(1) This section applies to a declaration under section 303FN, 303FO or 303FP.

(2) A declaration may be made:

(a) on the Minister's own initiative; or

(b) on written application being made to the Minister.

(3) The Minister may make a declaration about a plan or operation even though he or she considers that the plan or operation should be the subject of the declaration only to the extent that the plan or operation relates to a particular class of specimens. In such a case:

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(a) the instrument of declaration is to specify that class of specimens; and
(b) the plan or operation is covered by the declaration only to the extent that the plan or operation relates to that class of specimens.

(4) The Minister may make a declaration about a plan or operation even though he or she considers that the plan or operation should be the subject of the declaration only:
(a) during a particular period; or
(b) while certain circumstances exist; or
(c) while a certain condition is complied with.
In such a case, the instrument of declaration is to specify the period, circumstances or condition.

(5) If a declaration specifies a particular period as mentioned in subsection (4), the declaration ceases to be in force at the end of that period.

(6) If a declaration specifies circumstances as mentioned in subsection (4), the Minister must, by instrument published in the *Gazette*, revoke the declaration if he or she is satisfied that those circumstances have ceased to exist.

(7) The Minister may, by instrument published in the *Gazette*, vary a declaration by:
(a) specifying one or more conditions (or further conditions) to which the declaration is subject; or
(b) revoking or varying a condition:
(i) specified in the instrument of declaration; or
(ii) specified under paragraph (a).

(8) A condition may relate to reporting or monitoring.

(9) The Minister must, by instrument published in the *Gazette*, revoke a declaration if he or she is satisfied that a condition of the declaration has been contravened.

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(10) The Minister may, by instrument published in the *Gazette*, revoke a declaration at any time.

(11) A copy of an instrument under section 303FN, 303FO or 303FP or this section is to be made available for inspection on the internet.

303FU Approved commercial import program

The import of a specimen is an import from an approved commercial import program in accordance with this section if the specimen is sourced from a program that, under the regulations, is taken to be an approved commercial import program.

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Division 6—Miscellaneous

303GA Permit decision—controlled action, and action for which a non-Part 13A permit is required

(1) This section applies if:

(a) an application is made under section 303CE, 303DE or 303EL for a permit (the ***first permit***) to authorise the taking of an action (the ***proposed action***); and

(b) the Minister considers that:

(i) the proposed action may be or is a controlled action; or

(ii) the proposed action is related to an action (the ***related action***) that may be or is a controlled action; or

(iii) the proposed action is an action for which a non-Part 13A permit is required; or

(iv) the proposed action is related to an action (the ***related action***) that is an action for which a non-Part 13A permit is required.

Deferral of decision

(2) The Minister must neither issue, nor refuse to issue, the first permit before whichever is the latest of the following days:

(a) if subparagraph (1)(b)(i) applies—the day on which the Minister makes a decision under section 75 about whether the proposed action is a controlled action;

(b) if subparagraph (1)(b)(i) applies and the Minister makes a decision under section 75 that the proposed action is a controlled action—the day on which the Minister makes a decision under section 133 approving, or refusing to approve, the taking of the controlled action;

(c) if subparagraph (1)(b)(ii) applies—the day on which the Minister makes a decision under section 75 about whether the related action is a controlled action;

(d) if subparagraph (1)(b)(ii) applies and the Minister makes a decision under section 75 that the related action is a

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controlled action—the day on which the Minister makes a decision under section 133 approving, or refusing to approve, the taking of the controlled action;

(e) if subparagraph (1)(b)(iii) applies—the day on which a decision is made to issue, or to refuse to issue, the non-Part 13A permit referred to in that subparagraph;

(f) if subparagraph (1)(b)(iv) applies—the day on which a decision is made to issue, or to refuse to issue, the non-Part 13A permit referred to in that subparagraph.

Refusal of permit

(3) The Minister must not issue the first permit if:

(a) subparagraph (1)(b)(i) applies; and

(b) the Minister makes a decision under section 75 that the proposed action is a controlled action; and

(c) the Minister makes a decision under section 133 refusing to approve the taking of the controlled action.

(4) The Minister must not issue the first permit if:

(a) subparagraph (1)(b)(ii) applies; and

(b) the Minister makes a decision under section 75 that the related action is a controlled action; and

(c) the Minister makes a decision under section 133 refusing to approve the taking of the controlled action.

(5) The Minister must not issue the first permit if:

(a) subparagraph (1)(b)(iii) applies; and

(b) a decision is made to refuse to issue the non-Part 13A permit referred to in that subparagraph.

(6) The Minister must not issue the first permit if:

(a) subparagraph (1)(b)(iv) applies; and

(b) a decision is made to refuse to issue the non-Part 13A permit referred to in that subparagraph.

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Action for which a non-Part 13A permit is required

(7) For the purposes of this section, an action that a person proposes to take is ***an action for which a non-Part 13A permit is required*** if the taking of the action by the person without a non-Part 13A permit would be prohibited by this Act or the regulations if it were assumed that this Part had not been enacted.

(8) For the purposes of this section, a ***non-Part 13A permit*** is a permit issued under this Act (other than this Part) or the regulations.

Related action

(9) For the purposes of this section, if a specimen was taken, the action of exporting or importing the specimen is related to:
  (a) that taking; and
  (b) any action that affected the specimen after that taking and before that export or import.

(10) For the purposes of this section, if a specimen is derived from a specimen that was taken, the action of exporting or importing the first-mentioned specimen is related to:
  (a) that taking; and
  (b) any action that affected the first-mentioned specimen, or either of those specimens, after that taking and before that export or import.

303GB Exceptional circumstances permit

(1) If:
  (a) the Minister is considering an application by a person for a permit to be issued under section 303CG, 303DG or 303EN in relation to a specimen; and
  (b) under this Part, the Minister is precluded from issuing that permit unless the Minister is satisfied in relation to a matter; and
  (c) even though the Minister is not satisfied in relation to that matter, the Minister is satisfied that:

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(i) the export or import of the specimen, as the case may be, would not be contrary to the objects of this Part; and

(ii) exceptional circumstances exist that justify the proposed export or import of the specimen; and

(iii) the export or import of the specimen, as the case may be, would not adversely affect biodiversity;

the Minister may issue a permit to the person.

(1A) The Minister must not issue a permit under this section unless the grant of that permit would not be contrary to CITES.

(2) A permit under this section authorises the holder of the permit to take the action or actions specified in the permit, in the permitted period, without breaching section 303CC, 303CD, 303DD or 303EK.

(2A) For the purpose of subsection (2), the ***permitted period*** is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than:

(a) if the permit relates to a CITES specimen—6 months after that date; or

(b) if the permit relates to a specimen other than a CITES specimen—12 months after that date.

Duration of permit

(3) A permit under this section:

(a) comes into force on the date on which it is issued; and

(b) unless it is sooner cancelled, remains in force until all of the following periods have ended:

(i) the permitted period (within the meaning of subsection (2A));

(ii) each period for which one or more conditions of the permit are expressed to apply.

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Further information

(5) The Minister may, within 40 business days after an application is made as mentioned in subsection (1), request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.

(6) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

Public consultation

(7) Before issuing a permit under this section, the Minister must cause to be published on the internet a notice:
  (a) setting out the proposal to issue the permit; and
  (b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and
  (c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.

(8) A period specified in a notice under subsection (7) must not be shorter than 5 business days after the date on which the notice was published on the internet.

(9) In making a decision under subsection (1) about whether to issue a permit, the Minister must consider any comments about the proposal to issue the permit that were given in response to an invitation under subsection (7).

303GC Permit authorising the Secretary to export or import specimens

(1) The Secretary may apply to the Minister for a permit to be issued under subsection (2).

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(2) The Minister may, on application made by the Secretary under subsection (1), issue a permit to the Secretary. This subsection has effect subject to subsections (4) and (5).

(3) A permit under subsection (2) authorises the Secretary to take the action or actions specified in the permit, in the permitted period, without breaching section 303CC, 303CD, 303DD or 303EK.

(3A) For the purpose of subsection (3), the ***permitted period*** is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 12 months after that date.

(4) The Minister must not issue a permit under this section to export a specimen unless the Minister is satisfied that:

(a) both:

(i) the recipient of the specimen will be a relevant CITES authority of a country; and

(ii) the specimen will be used by that relevant CITES authority for the purpose of the identification of a specimen and/or for the purpose of education or training; or

(b) both:

(i) the specimen has been seized under this Act; and

(ii) the specimen will be used to facilitate investigations in or outside Australia in relation to trade relating to wildlife.

(5) The Minister must not issue a permit under this section to import a specimen unless the Minister is satisfied that:

(a) the specimen will be used by the Secretary for the purposes of the identification of a specimen; or

(b) both:

(i) the sender of the specimen will be a relevant CITES authority of a country; and

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(ii) the specimen will be used for the purpose of the identification of a specimen and/or for the purpose of education or training; or

(c) the specimen was exported from Australia in contravention of:

(i) this Part; or

(ii) the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; or

(d) the specimen will be used to facilitate investigations in or outside Australia in relation to trade relating to wildlife.

(6) A permit under this section:

(a) comes into force on the date on which it is issued; and

(b) unless it is sooner cancelled, remains in force until all of the following periods have ended:

(i) the permitted period (within the meaning of subsection (3A));

(ii) each period for which one or more conditions of the permit are expressed to apply.

303GD Testing permit—section 303EE assessments

Applications for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under subsection (5).

(2) The application must be accompanied by the fee (if any) prescribed by the regulations.

Further information

(3) The Minister may, within 40 business days after the application is made, request the person to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.

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(4) The Minister may refuse to consider the application until the person gives the Minister the information in accordance with the request.

Minister may issue permits

(5) The Minister may, on application made by a person under subsection (1), issue a permit to the person. This subsection has effect subject to subsections (7) and (8).

(6) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303EK.

(6A) For the purpose of subsection (6), the ***permitted period*** is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 6 months after that date.

(7) The Minister must not issue a permit to a person unless the Minister is satisfied that:

(a) the person has made an application to the Minister under section 303EE for the list referred to in section 303EB to be amended by including an item; and

(b) if the proposed amendment were made, the specimen would be covered by the item; and

(c) the specimen is not a CITES specimen; and

(d) if an assessment is to be made under subsection 303EE(3) of the potential impacts on the environment of the proposed amendment—the terms of reference for a report on the assessment have been:

(i) prepared as mentioned in paragraph 303EF(1)(a); or

(ii) finalised as mentioned in subparagraph 303EF(1)(b)(iii); and

(e) the person proposes to conduct tests on the specimen in Australia in order to obtain information for the assessment; and

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(f) the information is required for the assessment; and

(g) it is not reasonably practicable for the person to obtain the information without conducting the tests in Australia; and

(h) the tests will be conducted in a controlled environment.

(8) The Minister must not issue a permit under this section unless the permit is subject to one or more conditions about holding the specimen in quarantine.

Duration of permit

(9) A permit under this section:

(a) comes into force on the date on which it is issued; and

(b) unless it is sooner cancelled, remains in force until all of the following periods have ended:

(i) the permitted period (within the meaning of subsection (6A));

(ii) each period for which one or more conditions of the permit are expressed to apply.

Investigations

(10) A reference in this section to ***tests on the specimen*** includes a reference to investigations relating to the specimen.

303GE Conditions of permits

(1) This section applies to a permit issued under this Part.

(2) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (3).

(3) The Minister may, in accordance with the regulations:

(a) vary or revoke a condition of a permit; or

(b) impose further conditions of a permit.

(4) The Minister's powers under subsection (3) may be exercised:

(a) on the Minister's own initiative; or

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(b) on the application of the holder of the permit concerned.

(5) If a permit authorises its holder to take a particular action, a condition of the permit may require the holder to do, or not do, an act or thing before, at or after the time when the action takes place.

(5A) Without limiting subsection (5), a condition of a permit may be expressed to apply for a period that will not end until after the export or import of a specimen under the permit has occurred, including for example:

(a) a period the length of which is known when the condition is imposed (such as a period that is expressed as a specified number of years); or

(b) a period the length of which is unknown when the condition is imposed (such as a period that is expressed as the life of the specimen, or the life of progeny of the specimen).

Note: Conditions may, for example, relate to how a specimen, and its progeny, are kept or dealt with during their lifetimes.

(6) If a person is given an authority under section 303GG by the holder of a permit, subsections (5) and (5A) apply to the person in a corresponding way to the way in which they apply to the holder of the permit.

(7) Subsections (4), (5), (5A) and (6) are to be disregarded in determining the meaning of a provision of this Act (other than a provision of this Part) that relates to conditions of permits issued otherwise than under this Part.

303GF Contravening conditions of a permit

(1) This section applies to a permit issued under this Part.

(2) A person commits an offence if:

(a) the person is:

(i) the holder of a permit; or

(ii) a person to whom an authority under section 303GG has been given by the holder of a permit; and

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(b) the person engages in conduct; and
(c) the conduct results in a contravention of a condition of the permit.

Penalty: 300 penalty units.

(3) The holder of a permit commits an offence if:
(a) the person is:
(i) the holder of a permit; or
(ii) a person to whom an authority under section 303GG has been given by the holder of a permit; and
(b) the person engages in conduct; and
(c) the conduct results in a contravention of a condition of the permit; and
(d) the condition relates to:
(i) the sale or other disposal of a live animal or a live plant; or
(ii) the sale or other disposal of the progeny of a live animal or a live plant; or
(iii) the release from captivity of a live animal; or
(iv) the release from captivity of the progeny of a live animal; or
(v) the escape of a live plant.

Penalty: 600 penalty units.

(4) For the purposes of subsection (3), a person is taken to have released an animal from captivity if:
(a) that animal has escaped from captivity; and
(b) either:
(i) the person allowed the animal to escape; or
(ii) the person failed to take all reasonable measures to prevent the animal from escaping.

(4A) For the purposes of subsection (3), a person is taken to have allowed a plant to escape if:
(a) the plant has grown or propagated in the wild; and

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(b) either:
(i) the person allowed the plant to escape; or
(ii) the person failed to take all reasonable measures to prevent the plant from growing or propagating in the wild.

(5) In subsections (2) and (3), strict liability applies to the circumstance that the person was given an authority under section 303GG.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

303GG Authorities under permits

(1) This section applies to a permit issued under this Part.

(2) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(3) Subject to subsection (4), the holder of a permit may give a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(4) The holder of a permit must not give an authority unless:
(a) the permit contains a condition permitting the holder to do so; and
(b) the authority is given in accordance with any requirements set out in the condition.

(5) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(6) The giving of an authority does not prevent the taking of any action by the holder of the permit.

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(7) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

303GH Transfer of permits

(1) This section applies to a permit issued under this Part.

(2) On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

(3) In deciding whether to transfer the permit to another person, the Minister must consider whether the transferee is a suitable person to hold the permit, having regard to the matters set out in the regulations.

303GI Suspension or cancellation of permits

(1) This section applies to a permit issued under this Part.

(2) The Minister may, in accordance with the regulations:
(a) suspend a permit for a specified period; or
(b) cancel a permit.

303GJ Review of decisions

(1) Subject to subsection (2), an application may be made to the Administrative Review Tribunal for review of a decision:
(a) to issue or refuse a permit; or
(b) to specify, vary or revoke a condition of a permit; or
(c) to impose a further condition of a permit; or
(d) to transfer or refuse to transfer a permit; or
(e) to suspend or cancel a permit; or
(f) to issue or refuse a certificate under subsection 303CC(5); or
(g) of the Secretary under a determination in force under section 303EU; or
(h) to make or refuse a declaration under section 303FN, 303FO or 303FP; or

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(i) to vary or revoke a declaration under section 303FN, 303FO or 303FP.

(2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

(3) In this section:

permit means a permit under this Part.

303GK Permit to be produced

Export permit

(1) For the purposes of this Part, if the holder of a permit to export a specimen exports that specimen, he or she is not to be taken to have exported that specimen in accordance with that permit unless, before exporting the specimen, he or she:
  (a) produced the permit, or caused the permit to be produced, to an authorised officer doing duty in relation to the export of the specimen; or
  (b) received written notice from the Secretary authorising the export of the specimen without the production of the permit.

(2) The Secretary must not give the notice referred to in paragraph (1)(b) unless he or she:
  (a) is satisfied that the production of the permit is impracticable; and
  (b) endorses a copy of the permit to show that the notice is being given; and
  (c) makes that copy available to an authorised officer doing duty in relation to the export of the specimen.

Import permit

(3) For the purposes of this Part, if the holder of a permit to import a specimen imports that specimen, he or she is not to be taken to have imported that specimen in accordance with that permit unless,

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before or within a reasonable time after importing the specimen, he or she produced the permit, or caused the permit to be produced, to an authorised officer doing duty in relation to the import of the specimen.

Authorities under section 303GG

(4) If a person is given an authority under section 303GG by the holder of a permit, this section applies to the person in a corresponding way to the way in which it applies to the holder of the permit.

303GL Pre-CITES certificate to be produced

Export certificate

(1) If a person exports a specimen and wishes to rely on a certificate issued under subsection 303CC(5), he or she is not entitled to rely on that certificate unless, before exporting the specimen, he or she:
  (a) produced the certificate, or caused the certificate to be produced, to an authorised officer doing duty in relation to the export of the specimen; or
  (b) received written notice from the Secretary authorising the export of the specimen without the production of the certificate.

(2) The Secretary must not give the notice referred to in paragraph (1)(b) unless he or she:
  (a) is satisfied that the production of the certificate is impracticable; and
  (b) endorses a copy of the certificate to show that the notice is being given; and
  (c) makes that copy available to an authorised officer doing duty in relation to the export of the specimen.

Import certificate

(3) If a person imports a specimen and wishes to rely on a certificate referred to in paragraph 303CD(6)(b), he or she is not entitled to

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rely on the certificate unless, before or within a reasonable time after importing the specimen, he or she produced the certificate, or caused the certificate to be produced, to an authorised officer doing duty in relation to the import of the specimen.

303GM Fees

(1) This section applies to a permit under this Part.

(2) Such fees (if any) as are prescribed are payable in respect of the following:
  (a) the issue or the transfer of a permit;
  (b) the variation or revocation of a condition of a permit;
  (c) the imposition of a further condition of a permit.

303GN Possession of illegally imported specimens

Object

(1) The object of this section is:
  (a) to comply with Australia's obligations under:
    (i) the Biodiversity Convention; and
    (ii) CITES; and
  (b) to otherwise further the objects of this Part;
by prohibiting the possession of illegally imported specimens and the progeny of such specimens.

Note: See Article 8 of the Biodiversity Convention.

Possession of CITES specimens and unlisted regulated live specimens

(2) A person commits an offence if:
  (a) the person has in the person's possession, in the Australian jurisdiction, a specimen; and
  (b) the specimen is:
    (i) a CITES specimen; or

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(ii) a regulated live specimen that is not included in the list referred to in section 303EB;

and the person is reckless as to that fact; and

(c) the specimen does not belong to a native species.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

(3) Subsection (2) does not apply if:

(a) the specimen was lawfully imported; or

(b) the specimen was not imported, but all of the specimens of which it is the progeny were lawfully imported.

Note 1: For ***lawfully imported***, see section 303GY.

Note 2: The defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) Subsection (2) does not apply if the specimen was neither imported, nor the progeny of any other specimen that was imported.

Note: The defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

(5) Subsection (2) does not apply if the defendant has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Possession of listed regulated live specimens

(6) A person commits an offence if:

(a) the person has in the person's possession, in the Australian jurisdiction, a specimen; and

(b) the specimen is a regulated live specimen that is included in Part 2 of the list referred to in section 303EB, and the person is reckless as to that fact; and

(c) the specimen does not belong to a native species; and

(d) either:

(i) the specimen was unlawfully imported; or

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(ii) the specimen was not imported, but any of the specimens of which it is the progeny was unlawfully imported.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

(7) Subsection (6) does not apply if the defendant has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Unlawfully imported

(8) For the purposes of this section, a specimen is ***unlawfully imported*** if, and only if, it was imported, but was not lawfully imported (section 303GY).

303GO Regulations relating to welfare

(1) This section applies to regulations made for the purposes of paragraph 303CG(3)(c), 303DG(4)(b), 303EN(3)(e), 303FN(3)(c) or 303FO(3)(f).

(2) The conditions specified in those regulations in relation to a live animal may:

(a) deal with the welfare of the animal:

(i) when the animal is taken; or

(ii) when the animal is being held after it has been taken; or

(iii) when the animal is being prepared or shipped; or

(iv) when the animal is under the control of the proposed recipient; and

(b) may deal with eliminating or minimising the risk of:

(i) injury to the animal; or

(ii) adverse effects on the health of the animal; or

(iii) cruel treatment of the animal.

(3) The conditions specified in those regulations in relation to a live plant may:

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(a) deal with the welfare of the plant:
(i) when the plant is taken; or
(ii) when the plant is being held after it has been taken; or
(iii) when the plant is being prepared or shipped; or
(iv) when the plant is under the control of the proposed recipient; and
(b) may deal with eliminating or minimising the risk of:
(i) injury to the plant; or
(ii) adverse effects on the health of the plant.

(4) Subsections (2) and (3) do not limit paragraph 303CG(3)(c), 303DG(4)(b), 303EN(3)(e), 303FN(3)(c) or 303FO(3)(f).

303GP Cruelty—export or import of animals

(1) A person commits an offence if:
(a) the person exports or imports a live animal in a manner that subjects the animal to cruel treatment; and
(b) the person knows that, or is reckless as to whether, the export or import subjects the animal to cruel treatment; and
(c) the animal is a CITES specimen; and
(d) the person contravenes section 303CC or 303CD in relation to the export or import of the animal.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:
(a) the person exports a live animal in a manner that subjects the animal to cruel treatment; and
(b) the person knows that, or is reckless as to whether, the export subjects the animal to cruel treatment; and
(c) the animal is a regulated native specimen; and
(d) the person contravenes section 303DD in relation to the export of the animal.

Penalty: Imprisonment for 2 years.

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(3) A person commits an offence if:
  (a) the person imports a live animal in a manner that subjects the animal to cruel treatment; and
  (b) the person knows that, or is reckless as to whether, the import subjects the animal to cruel treatment; and
  (c) the animal is a regulated live specimen; and
  (d) the person contravenes section 303EK in relation to the import of the animal.

Penalty: Imprisonment for 2 years.

(4) This section does not limit section 303GE.

303GQ Imports of specimens contrary to the laws of a foreign country

(1) A person must not intentionally import a specimen if the person knows that:
  (a) the specimen was exported from a foreign country; and
  (b) at the time the specimen was exported, the export of the specimen was prohibited by a law of the foreign country that corresponds to this Part.

Penalty: Imprisonment for 5 years.

(2) A prosecution must not be instituted for an offence against this section unless a relevant CITES authority of the foreign country has requested:
  (a) the investigation of the offence; or
  (b) assistance in relation to a class of offences in which the offence is included.

303GR Evidence

(1) In any proceedings for an offence against this Part:
  (a) any record kept in accordance with the regulations or another law of the Commonwealth or a law of a State or Territory is

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admissible as prima facie evidence of the facts stated in the record; and

(b) a copy of an entry in such a record, being a copy certified by the person by whom the record is kept to be a true copy of the entry, is admissible as prima facie evidence of the facts stated in the entry; and

(c) a document purporting to be a record kept in accordance with the regulations or another law of the Commonwealth, or a law of a State or Territory, or purporting to be such a certified copy as is referred to in paragraph (b), is taken, unless the contrary is established, to be such a record or certified copy, as the case may be.

(2) If, in any proceedings for an offence against this Part, a record referred to in paragraph (1)(a) is tendered as prima facie evidence of a fact stated in the record, the person alleged to have committed the offence may require the person who kept that record to be called as a witness for the prosecution in the proceedings.

303GS Evidence of examiner

(1) The Minister may, by writing, appoint appropriately qualified persons to be examiners for the purposes of this Part.

(2) Subject to subsection (4), a certificate signed by an examiner appointed under subsection (1) setting out, in relation to a substance, matter, specimen or thing, one or more of the following:

(a) that he or she is appointed as the examiner under subsection (1);

(b) when and from whom the substance, matter, specimen or thing was received;

(c) what labels or other means of identification accompanied the substance, matter, specimen or thing when it was received;

(d) what container held the substance, matter, specimen or thing when it was received;

(e) a description, including the weight, of the substance, matter, specimen or thing when it was received;

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(f) the name of any method used to analyse the substance, matter, specimen or thing or any portion of it;
(g) the results of any such analysis;
(h) how the substance, matter, specimen or thing was dealt with after handling by the examiner, including details of:
(i) the quantity of the substance, matter, specimen or thing retained after analysis; and
(ii) names of any persons to whom any of the substance, matter, specimen or thing was given after analysis; and
(iii) measures taken to secure any retained quantity of the substance, matter, specimen or thing after analysis;

is admissible in any proceeding for an offence against this Part as prima facie evidence of the matters in the certificate and the correctness of the results of the analysis.

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) is taken to be such a certificate unless the contrary is established.

(4) A certificate is not to be admitted in evidence in accordance with subsection (2) in proceedings for an offence against this Part unless:
(a) the person charged with the offence; or
(b) a solicitor who has appeared for the person in those proceedings;

has, at least 14 days before the certificate is sought to be admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

(5) Subject to subsection (6), if, under subsection (2), a certificate is admitted in evidence in proceedings for an offence against this Part, the person charged with the offence may require the person giving the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.

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(6) Subsection (5) does not entitle the person charged to require the person giving a certificate to be called as a witness for the prosecution unless:

(a) the prosecutor has been given at least 4 days notice of the person's intention to require the examiner to be so called; or

(b) the court, by order, allows the person charged to require the person giving the certificate to be so called.

(7) Any evidence given in support, or in rebuttal, of a matter stated in a certificate given under subsection (2) must be considered on its merits and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

303GT Protection of witness

(1) A witness for the prosecution in any proceedings for an offence against this Part is not to be compelled to disclose:

(a) the fact that the witness received any information; or

(b) the nature of any information received by the witness; or

(c) the name of the person who gave the witness any information.

(2) An authorised officer who is a witness in any proceedings for an offence against this Part is not to be compelled to produce any report:

(a) that was made or received by the authorised officer in confidence in his or her capacity as an authorised officer; or

(b) that contains information received by the authorised officer in confidence.

(3) Subsections (1) and (2) are to be disregarded in determining the compellability of witnesses in proceedings for an offence against a provision of this Act other than this Part.

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303GU Forms and declarations—persons arriving in Australia or an external Territory

The regulations may provide for forms to be completed, or declarations to be made, in relation to specimens by persons arriving in Australia or an external Territory.

303GV Saving of other laws

(1) This Part is in addition to the following laws:
  (a) the *Customs Act 1901*;
  (b) the *Biosecurity Act 2015*;
  (c) any other law of the Commonwealth or of an external Territory, whether passed or made before or after the commencement of this Part.

(2) The holder of a permit under this Part authorising the export or import of a specimen is not, by reason only of being the holder of the permit, exempt from compliance with any law referred to in paragraph (1)(a), (b) or (c) that applies in relation to that specimen.

(3) Without limiting subsection (1), this Part, and regulations made for the purposes of this Part, do not authorise or permit the doing of any act in contravention of the *Biosecurity Act 2015* or of a law of an external Territory relating to quarantine.

303GW Part not to apply to certain specimens

Transhipment

(1) For the purposes of this Part, if a specimen is brought into Australia from a country:
  (a) for the purpose of transhipment to another country; or
  (b) as part of an aircraft's stores or ship's stores;

that specimen:
  (c) is taken not to have been imported into Australia; and
  (d) when it leaves Australia, is taken not to be exported from Australia.

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(2) For the purposes of this Part, if a specimen is brought into an external Territory:

(a) for the purpose of transhipment to another country; or

(b) as part of an aircraft's stores or ship's stores;

that specimen:

(c) is taken not to have been imported into that Territory; and

(d) when it leaves that Territory, is taken not to be exported from that Territory.

(3) For the purposes of subsection (1), a specimen is to be taken to be brought into Australia for the purpose of transhipment to another country if, and only if:

(a) the specimen is brought into Australia in the course of being transported to an identified person in the other country; and

(b) any delay in its leaving Australia will be due solely to the arrangements for its transport; and

(c) it will be under customs control under the *Customs Act 1901* all the time that it is in Australia.

(4) For the purposes of subsection (2), a specimen is taken to be brought into an external Territory for the purpose of transhipment to another country if, and only if:

(a) the specimen is brought into that Territory in the course of being transported to an identified person in the other country; and

(b) any delay in its leaving that Territory will be due solely to the arrangements for its transport; and

(c) it will be under the control of an authorised officer all the time that it is in that Territory.

Emergency

(5) For the purposes of this Part, if:

(a) the Minister, the Director of Biosecurity, a prescribed person or a prescribed organisation is satisfied that, in order to meet an emergency involving danger to the life or health of a human or an animal, it is necessary or desirable that a

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specimen that could be used in treating that person or animal should be sent out of, or brought into, Australia or an external Territory; and

(b) that specimen is sent out of, or brought into, Australia or that Territory, as the case requires, to meet that emergency;

that specimen is taken not to have been exported or imported, as the case may be.

Quarantine

(6) Subject to subsections (1), (2) and (5), if, in accordance with the *Biosecurity Act 2015* or a law of an external Territory relating to quarantine, a person exercising powers under that Act or law imports a specimen that is subject to biosecurity control under the *Biosecurity Act 2015* or subject to quarantine, then, for the purposes of this Part, that specimen is taken to have been imported by:

(a) if a person holds a permit to import that specimen—the holder of that permit; or

(b) in any other case—a person whose identity is not known;

but this subsection does not affect the commission of any offence committed before the importation of that specimen.

Definitions

(7) In this section:

aircraft's stores and ***ship's stores*** have the same meanings respectively as they have in Part VII of the *Customs Act 1901*.

303GX Part not to apply to certain specimens used by traditional inhabitants

(1) In this section:

area in the vicinity of the Protected Zone means an area in respect of which a notice is in force under subsection (2).

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Australian place means a place in Australia that is in the Protected Zone or in an area in the vicinity of the Protected Zone.

Papua New Guinea place means a place in Papua New Guinea that is in the Protected Zone or in an area in the vicinity of the Protected Zone.

prescribed specimen means a specimen of a kind specified in a notice in force under subsection (3).

Protected Zone means the zone established under Article 10 of the Torres Strait Treaty, being the area bounded by the line described in Annex 9 to that treaty.

Torres Strait Treaty means the Treaty between Australia and the Independent State of Papua New Guinea that was signed at Sydney on 18 December 1978.

traditional activities has the same meaning as in the Torres Strait Treaty.

traditional inhabitants has the same meaning as in the *Torres Strait Fisheries Act 1984*.

(2) The Minister may, by notifiable instrument, declare an area adjacent to the Protected Zone to be an area in the vicinity of the Protected Zone for the purposes of this section.

(3) The Minister may, by notifiable instrument, declare that a specimen of a kind specified in the notice is a prescribed specimen for the purposes of this section.

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunsetting under that Act.

(4) For the purposes of this Part, if a prescribed specimen that is owned by, or is under the control of, a traditional inhabitant and that has been used, is being used or is intended to be used by him or her in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone, is:

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(a) brought to an Australian place from a Papua New Guinea place; or

(b) taken from an Australian place to a Papua New Guinea place;

then, subject to subsection (5), that specimen:

(c) in the case where the specimen is brought into Australia as mentioned in paragraph (a)—is taken not to have been imported into Australia; and

(d) in the case where the specimen is taken from Australia as mentioned in paragraph (b)—is taken not to have been exported from Australia.

(5) If:

(a) a prescribed specimen that has been brought into Australia is, under subsection (4), taken not to have been imported into Australia; and

(b) that prescribed specimen is brought to a place in Australia that is not in the Protected Zone or in an area in the vicinity of the Protected Zone;

the prescribed specimen is taken to have been imported into Australia upon being brought to the place referred to in paragraph (b).

303GY When a specimen is *lawfully imported*

For the purposes of this Part, a specimen is ***lawfully imported*** if, and only if, it was imported and:

(a) in a case where the specimen was imported after the commencement of this Part—it was not imported in contravention of this Part; or

(b) in a case where the specimen was imported when the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* was in force—it was not imported in contravention of that Act; or

(c) in a case where the specimen was imported before the commencement of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*—it was not imported in contravention of:

(i) the Customs (Endangered Species) Regulations; or

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(ii) the Customs (Prohibited Imports) Regulations.

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Part 14—Conservation agreements

304 Object of this Part

(1) The object of this Part is to provide for:

(a) conservation agreements between the Commonwealth and persons related to the protection and conservation of the following:

(i) biodiversity;

(ii) the world heritage values of declared World Heritage properties;

(iii) the National Heritage values of National Heritage places;

(iv) the Commonwealth Heritage values of Commonwealth Heritage places;

(v) the ecological character of a declared Ramsar wetland;

(vi) the environment, in respect of the impact of a nuclear action;

(vii) the environment in a Commonwealth marine area;

(viia) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development;

(viii) the environment on Commonwealth land; and

(b) the effect of conservation agreements; and

(c) the publication of conservation agreements.

(2) Conservation agreements are agreements whose primary object is to enhance the conservation of matters referred to in paragraph (1)(a). They may relate to private or public land, or to marine areas.

Note: Conservation agreements cannot cover all or part of a Commonwealth reserve (see subsection 305(4)).

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305 Minister may enter into conservation agreements

(1) The Minister may, on behalf of the Commonwealth, enter into an agreement (a ***conservation agreement***) with a person for the protection and conservation of all or any of the following:

(a) biodiversity in the Australian jurisdiction;

(b) the world heritage values of a declared World Heritage property in the Australian jurisdiction;

(c) the National Heritage values of a National Heritage place;

(d) the Commonwealth Heritage values of a Commonwealth Heritage place (whether inside or outside the Australian jurisdiction);

(e) the ecological character of a declared Ramsar wetland in the Australian jurisdiction;

(f) the environment, in respect of the impact of a nuclear action in the Australian jurisdiction;

(g) the environment in a Commonwealth marine area in the Australian jurisdiction;

(ga) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development in the Australian jurisdiction;

(h) the environment on Commonwealth land in the Australian jurisdiction.

Note: Conservation agreements cannot cover all or part of a Commonwealth reserve (see subsection 305(4)).

(1A) The protection and conservation of the matters in subsection (1) include all or any of the following:

(a) the protection, conservation and management of any listed species or ecological communities, or their habitats;

(b) the management of things in a way necessary for the protection and conservation of:

(i) the world heritage values of a declared World Heritage property; or

(ii) the National Heritage values of a National Heritage place; or

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(iii) the Commonwealth Heritage values of a Commonwealth Heritage place; or

(iv) the ecological character of a declared Ramsar wetland; or

(v) the environment, in respect of the impact of a nuclear action; or

(vi) the environment in a Commonwealth marine area; or

(via) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development; or

(vii) the environment on Commonwealth land;

(c) the abatement of processes, and the mitigation or avoidance of actions, that might adversely affect:

(i) biodiversity; or

(ii) the world heritage values of a declared World Heritage property; or

(iii) the National Heritage values of a National Heritage place; or

(iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or

(v) the ecological character of a declared Ramsar wetland; or

(vi) the environment, in respect of the impact of a nuclear action; or

(vii) the environment in a Commonwealth marine area; or

(viia) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development; or

(viii) the environment on Commonwealth land.

Note: When the Minister is considering entering into a conservation agreement, the Minister must take into account any responsibilities of other Commonwealth Ministers that may be affected by the agreement.

(2) However, the Minister must not enter into a conservation agreement unless satisfied that:

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(a) in the case of a proposed agreement wholly or partly for the protection and conservation of biodiversity—the agreement:
  (i) will result in a net benefit to the conservation of biodiversity; and
  (ii) is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan; and

(b) in the case of a proposed agreement wholly or partly for the protection and conservation of heritage values—the agreement:
  (i) will result in a net benefit to the conservation of those heritage values; and
  (ii) is not inconsistent with at least one of the Australian World Heritage management principles, the National Heritage management principles and the Commonwealth Heritage management principles; and

(c) in the case of a proposed agreement wholly or partly for the protection and conservation of the ecological character of a declared Ramsar wetland—the agreement:
  (i) will result in a net benefit to the conservation of that ecological character; and
  (ii) is not inconsistent with the Australian Ramsar management principles; and

(d) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment, in respect of the impact nuclear actions—the agreement does not relate to the construction or operation of any of the following nuclear installations:
  (i) a nuclear fuel fabrication plant;
  (ii) a nuclear power plant;
  (iii) an enrichment plant;
  (iv) a reprocessing facility; and

(e) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment in a Commonwealth marine area—the agreement will result in a net benefit to the conservation of the environment in that area; and

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(ea) in the case of a proposed agreement wholly or partly for the protection and conservation of a water resource, in respect of the impacts of actions involving unconventional gas development or large coal mining development—the agreement will result in a net benefit to the conservation of the water resource; and

(f) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment on Commonwealth land—the agreement will result in a net benefit to the conservation of the environment on that land.

(2A) Subparagraph (2)(d)(ii) does not apply to a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.

(3) For the purposes of subsection (2), in deciding whether a proposed agreement will result in a net benefit to the conservation as mentioned in paragraph (2)(a), (b), (c), (e) or (f), the Minister must have regard to the matters (if any) prescribed by the regulations.

(3A) If:

(a) the Minister is considering whether to enter into a proposed conservation agreement that is wholly or partly for the protection and conservation of biodiversity; and

(b) the agreement would or could affect a particular listed threatened species or listed threatened ecological community;

the Minister must, in deciding whether to enter into the agreement, have regard to any approved conservation advice for the species or community.

(4) A conservation agreement must not cover all or part of a Commonwealth reserve.

(5) Under subsection (1), the Minister may enter into a conservation agreement covering land with one of the following persons who has a usage right relating to the land:

(a) an indigenous person;

(b) a body corporate wholly owned by indigenous persons;

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(c) a body corporate established by or under an Act for the purposes of holding for the benefit of indigenous persons land vested in it by or under that Act;

(d) the trustee of a trust that holds land for the benefit of indigenous persons.

This does not limit subsection (1).

(6) The Minister must take account of the following when entering into a conservation agreement that is wholly or partly for the protection and conservation of biodiversity as described in subsection (5):

(a) paragraph (j) of Article 8 of the Biodiversity Convention;

(b) paragraph (c) of Article 10 of the Biodiversity Convention;

(c) paragraph 4 of Article 18 of the Biodiversity Convention;

(d) objective 1.8.2 of the National Strategy for the Conservation of Australia's Biological Diversity, published by the Commonwealth in 1996.

306 Content of conservation agreements

(1) Without limiting section 305, a conservation agreement may provide, for example, for all or any of the following:

(a) activities that promote the protection and conservation of all or any of the following:

(i) biodiversity;

(ii) the world heritage values of a declared World Heritage property;

(iii) the National Heritage values of a National Heritage place;

(iv) the Commonwealth Heritage values of a Commonwealth Heritage place;

(v) the ecological character of a declared Ramsar wetland;

(vi) the environment, in respect of the impact of a nuclear action;

(vii) the environment in a Commonwealth marine area;

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(viia) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development;

(viii) the environment on Commonwealth land;

(b) controlling or prohibiting, in any place covered by the agreement, actions or processes that might adversely affect:

(i) the species, ecological communities, habitats or potential habitats covered by the agreement; or

(ii) the world heritage values of a declared World Heritage property; or

(iii) the National Heritage values of a National Heritage place; or

(iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or

(v) the ecological character of a declared Ramsar wetland; or

(vi) the environment, in respect of the impact of a nuclear action; or

(vii) the environment in a Commonwealth marine area; or

(viia) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development; or

(viii) the environment on Commonwealth land;

(c) requiring a person bound by the agreement not to obstruct access by a person authorised under the agreement to places covered by the agreement for the purpose of monitoring compliance with the agreement;

(d) requiring a person bound by the agreement to give such an authorised person information requested by the authorised person that is in the first-mentioned person's control and is relevant to compliance with the agreement;

(e) requiring the Commonwealth to provide financial, technical or other assistance to a person bound by the agreement;

(g) the commencement and duration of the agreement.

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(2) Without limiting section 305 or subsection (1) of this section, a conservation agreement entered into with the owner of a place may provide, for example, for all or any of the following:

(a) requiring the owner to carry out specified activities, or to do specified things, that promote the conservation of all or any of the following:

(i) biodiversity;

(ii) the world heritage values of a declared World Heritage property;

(iii) the National Heritage values of a National Heritage place;

(iv) the Commonwealth Heritage values of a Commonwealth Heritage place;

(v) the ecological character of a declared Ramsar wetland;

(vi) the environment, in respect of the impact of a nuclear action;

(vii) the environment in a Commonwealth marine area;

(viia) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development;

(viii) the environment on Commonwealth land;

(b) restricting the use of the place, or requiring the owner to refrain from, control or refuse to permit, actions or processes that may adversely affect:

(i) the species, ecological communities, habitats or potential habitats covered by the agreement; or

(ii) the world heritage values of a declared World Heritage property; or

(iii) the National Heritage values of a National Heritage place; or

(iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or

(v) the ecological character of a declared Ramsar wetland; or

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(vi) the environment, in respect of the impact of a nuclear action; or

(vii) the environment in a Commonwealth marine area; or

(viia) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development; or

(viii) the environment on Commonwealth land;

(c) requiring the owner to permit access to the place by specified persons;

(d) requiring the owner to contribute towards costs incurred in implementing the agreement;

(e) specifying the manner in which any money paid to the owner under the agreement is to be applied by the owner;

(f) requiring the owner to repay to the Commonwealth any money paid to the owner under the agreement if the owner commits a specified breach of the agreement or in other specified circumstances;

(g) providing for any other matter relating to the conservation or enhancement of the place, including the preparation and implementation of a plan of management for the place.

306A Conservation agreement may include declaration that actions do not need approval under Part 9

(1) A conservation agreement may include a declaration to the effect that actions in a specified class do not need approval under Part 9 for the purposes of a specified provision of Part 3. The declaration may specify conditions relating to the taking of actions in the class.

(2) The Minister must not enter into a conservation agreement that contains a declaration under subsection (1) unless the Minister is satisfied that the actions to which the declaration relates are not likely to have a significant impact on the matter protected by the provision of Part 3 proposed to be specified in the declaration.

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307 Conservation agreements to be legally binding

A conservation agreement is legally binding on:

(a) the Commonwealth; and

(b) the person or persons with whom the Minister entered into the agreement on behalf of the Commonwealth; and

(c) anyone else who is a successor to the whole or any part of any interest that a person mentioned in paragraph (b) had, when the agreement was entered into, in any place covered by the agreement.

307A Conservation agreements may deal with remediation or mitigation measures

When this section applies

(1) This section applies if the Minister considers that an action taken by a person after the commencement of this section contravened, or may have contravened, a provision of Part 3.

Conservation agreements may provide for measures to repair or mitigate damage

(2) The Minister may enter into a conservation agreement with the person that provides for the protection and conservation of a matter referred to in section 305 by providing for the taking of measures to repair or mitigate damage to the matter protected by the provision of Part 3 (whether or not the damage may or will be, or has been, caused by the action).

(3) The conservation agreement may state that specified provisions of the agreement, being provisions for the taking of measures as mentioned in subsection (2), are provisions that may be enforced in the Federal Court under this section. A provision of the agreement to which such a statement applies is a ***remediation provision***.

(4) If the conservation agreement contains a statement as mentioned in subsection (3), that statement must specify the provision of Part 3 referred to in subsection (1).

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Federal Court may order compliance with remediation provision

(5) If the Minister considers that the person has contravened a remediation provision, the Minister may apply to the Federal Court for an order under subsection (6).

(6) If the Federal Court is satisfied that the person has contravened a remediation provision, the Court may make one or more of the following orders:
   (a) an order directing the person to comply with the remediation provision;
   (b) any other order that the Court considers appropriate.

Civil penalty for contravention of remediation provision

(7) The person must not contravene a remediation provision.

(8) Subsection (7) is a civil penalty provision. Under section 481, the Federal Court may order the person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person to pay under that section for a contravention of the provision of Part 3 referred to in subsection (1).

This section does not limit sections 305, 306 and 307

(9) This section does not limit anything in sections 305, 306 and 307.

308 Variation and termination of conservation agreements

(1) A conservation agreement may be varied by a variation agreement entered into by the Minister, on behalf of the Commonwealth, and the person or persons bound by the conservation agreement under paragraph 307(b) or (c).

(2) Sections 305 and 306 apply in relation to variation agreements in the same way as they apply in relation to conservation agreements.

(3) A conservation agreement may be terminated:

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(a) by agreement between the Minister, on behalf of the Commonwealth, and the person or persons bound by the conservation agreement under paragraph 307(b) or (c); or

(b) in such other manner, or in such circumstances (if any), as the agreement specifies.

(4) If the Minister is satisfied that a conservation agreement is not capable of achieving its purpose, the Minister may, by order published in the *Gazette*, terminate the agreement or vary it in any way the Minister thinks necessary to ensure it becomes capable of achieving its purpose.

(5) The Minister may make an order under subsection (4) in relation to a conservation agreement without the agreement of the person or persons bound by the conservation agreement under paragraph 307(b) or (c).

(6) The Minister must cause a copy of an order to be laid before each House of the Parliament within the prescribed period after the publication of the order.

(7) If a conservation agreement is varied by an order, the person or persons bound by the conservation agreement under paragraph 307(b) or (c) may, by written notice given to the Minister, terminate the agreement.

(8) If a conservation agreement is terminated or varied by an order, the person or persons bound by the conservation agreement under paragraph 307(b) or (c) are not entitled to any compensation in respect of the termination or variation.

Note: See Parts 17 and 18 for remedies for breach of conservation agreements.

309 Publication of conservation agreements

(1) As soon as practicable after a conservation agreement has been entered into or varied, other than by an order under subsection 308(4), the Minister must:

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(a) take reasonable steps to ensure that copies of the agreement or variation are available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory; and

(b) cause a notice of the agreement or variation to be published:

(i) in the *Gazette*; and

(ii) in any other way required by the regulations.

(2) The notice must:

(a) state that the agreement or variation has been entered into or made; and

(b) specify the places where copies of the agreement or variation may be purchased.

(3) Subsection (1) does not apply in relation to a conservation agreement, or a variation of such an agreement, or any part of such an agreement or variation, if the Minister is satisfied that disclosure of the agreement or variation, or the part of the agreement or variation, as the case may be, would result in harm being done to:

(a) components of biodiversity; or

(b) the world heritage values of a declared World Heritage property; or

(c) the National Heritage values of a National Heritage place; or

(d) the Commonwealth Heritage values of a Commonwealth Heritage place.

(4) Subsection (1) does not apply in relation to a conservation agreement, or a variation of such an agreement, or any part of such an agreement or variation, if the Minister is satisfied that disclosure of the agreement or variation, or the part of the agreement or variation, as the case may be, would disclose matters that the Minister is satisfied are commercial-in-confidence.

(5) The Minister must not be satisfied that matter is commercial-in-confidence unless a person demonstrates to the Minister that:

(a) release of information under subsection (1) about the matter would cause competitive detriment to the person; and

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(b) the information is not in the public domain; and
(c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
(d) the information is not readily discoverable.

310 List of conservation agreements

The Minister must:
(a) maintain an up-to-date list of conservation agreements that are in force; and
(b) take reasonable steps to ensure that copies of the list are available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

311 Commonwealth, State and Territory laws

(1) A provision of a conservation agreement has no effect to the extent (if any) to which it is inconsistent with a law of the Commonwealth, or of a State or Territory.

(2) For the purposes of subsection (1), a provision of a conservation agreement is not taken to be inconsistent with a law of the Commonwealth, or of a State or Territory, if both the provision and the law are capable of being complied with.

312 Minister must not give preference

The Minister must not, in exercising powers on behalf of the Commonwealth under this Part, give preference to one State or any part thereof within the meaning of section 99 of the Constitution.

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Part 15—Protected areas

Division 1—Managing World Heritage properties

Subdivision A—Simplified outline of this Division

313 Simplified outline of this Division

The following is a simplified outline of this Division:

The Commonwealth may submit a property for inclusion in the World Heritage List only after seeking the agreement of relevant States, self-governing Territories and land-holders.

The Minister must make plans for managing properties on the World Heritage List that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

The Commonwealth must try to prepare and implement management plans for other properties on the World Heritage List, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to World Heritage properties in States and Territories.

The Commonwealth can provide assistance for the protection or conservation of declared World Heritage properties.

Note: Section 12 prohibits an action that has a significant impact on the world heritage values of a declared World Heritage property, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

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Subdivision B—Seeking agreement on World Heritage listing

314 Special provisions relating to World Heritage nominations

(1) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property containing an area owned or occupied by another person only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the other person on:

(a) the proposed submission of the property (so far as it relates to the area); and

(b) management arrangements for the property (so far as they relate to the area).

(2) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property in a State or self-governing Territory only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the State or Territory on:

(a) the proposed submission of the property; and

(b) management arrangements for the property.

(3) A failure to comply with this section does not affect the submission of a property to the World Heritage Committee for inclusion in the World Heritage List or the status of a property as a declared World Heritage property.

Subdivision C—Notice of submission of property for listing

315 Minister must give notice of submission of property for listing etc.

(1) The Minister must give notice in the *Gazette* and in the way (if any) prescribed by the regulations of any of the following events as soon as practicable after the event occurs:

(a) the Commonwealth submits a property to the World Heritage Committee for inclusion in the World Heritage List;

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(b) the Commonwealth extends the boundaries of a property submitted to the World Heritage Committee for inclusion in the World Heritage List;

(c) the Commonwealth restricts the boundaries of a property submitted to the World Heritage Committee for inclusion in the World Heritage List;

(d) the Commonwealth withdraws the submission of a property for inclusion in the World Heritage List;

(e) a property submitted by the Commonwealth is included in the World Heritage List;

(f) all or part of a property is removed from the World Heritage List.

(2) The notice must specify the area included in, or excluded or deleted from, the submission or World Heritage List as a result of the event.

(3) A failure to comply with this section does not affect the status of an area as a declared World Heritage property.

Subdivision D—Plans for listed World Heritage properties in Commonwealth areas

316 Making plans

Minister must make plan

(1) The Minister must make a written plan for managing a property that is included in the World Heritage List and is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the property:

(a) is included in the World Heritage List; or

(b) becomes entirely within one or more Commonwealth areas.

Amending and replacing plan

(2) The Minister may make a written plan amending, or revoking and replacing, a plan made under subsection (1) or this subsection.

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Requirements for plan

(3) A plan must not be inconsistent with:
  (a) Australia's obligations under the World Heritage Convention; or
  (b) the Australian World Heritage management principles.

Note: Section 323 explains what Australian World Heritage management principles are.

Ensuring plans reflect current management principles

(4) If the Australian World Heritage management principles change so that a plan (the ***earlier plan***) is inconsistent with them, the Minister must make another plan:
  (a) amending the earlier plan so it is not inconsistent with them; or
  (b) revoking and replacing the earlier plan.

Plan may be in same document as another plan

(5) To avoid doubt, a plan under this section for a property may be in the same document as:
  (a) a plan under this section for another property; or
  (b) a plan that this Act or another law of the Commonwealth requires or permits to be prepared.

Commonwealth reserves

(6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a property as is in a Commonwealth reserve.

Note: A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the World Heritage Convention.

317 Notice of plans

The Minister must give notice of the making of a plan under section 316, in accordance with the regulations.

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318 Commonwealth compliance with plans

(1) The Commonwealth or a Commonwealth agency must not:
  (a) contravene a plan made under section 316; or
  (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.

(2) If there is no plan in force under section 316 for a particular property described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the property are not inconsistent with the Australian World Heritage management principles.

319 Review of plans every 5 years

(1) The Minister must cause a review of a plan made under section 316 to be carried out at least once in each period of 5 years after the plan is made.

(2) The review must consider whether the plan is consistent with the Australian World Heritage management principles in force at the time.

Note: Section 323 explains what Australian World Heritage management principles are.

Subdivision E—Managing World Heritage properties in States and self-governing Territories

320 Application

This Subdivision applies in relation to a property that:
  (a) is:
    (i) in a State; or
    (ii) in a self-governing Territory; or

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(iii) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*; and

(b) is not entirely within one or more Commonwealth areas.

321 Co-operating to prepare and implement plans

(1) This section applies in relation to a property that is included in the World Heritage List.

(2) The Commonwealth must use its best endeavours to ensure a plan for managing the property in a way that is not inconsistent with Australia's obligations under the World Heritage Convention or the Australian World Heritage management principles is prepared and implemented in co-operation with the State or Territory.

Note: The Commonwealth and the State or Territory could make a bilateral agreement adopting the plan and providing for its implementation.

(3) Subsection (2) does not apply in relation to so much of a property as is in the Great Barrier Reef Marine Park.

Note: A zoning plan must be prepared under the *Great Barrier Reef Marine Park Act 1975* for areas that are part of the Great Barrier Reef Marine Park. In preparing a zoning plan, regard must be had to the Australian World Heritage management principles.

322 Commonwealth responsibilities

(1) This section applies in relation to a property that is a declared World Heritage property.

(2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the property in a way that is not inconsistent with:

(a) the World Heritage Convention; and

(b) the Australian World Heritage management principles; and

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(c) if the property is on the World Heritage List and a plan for managing the property has been prepared as described in section 321—that plan.

Subdivision F—Australian World Heritage management principles

323 Australian World Heritage management principles

(1) The regulations must prescribe principles for the management of natural heritage and cultural heritage. The principles prescribed are the ***Australian World Heritage management principles***.

(2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the World Heritage Convention.

(3) In this section:

cultural heritage has the meaning given by the World Heritage Convention.

natural heritage has the meaning given by the World Heritage Convention.

Subdivision G—Assistance for protecting World Heritage properties

324 Commonwealth assistance for protecting declared World Heritage properties

(1) The Commonwealth may give financial or other assistance for the protection or conservation of a declared World Heritage property to:

(a) a State or self-governing Territory in which the property occurs; or

(b) any other person.

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(2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

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Division 1A—Managing National Heritage places

Subdivision A—Preliminary

324A Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may only include a place in the National Heritage List if the Minister is satisfied that the place has one or more National Heritage values.

The Minister must ask the Australian Heritage Council for an assessment of the place's National Heritage values and may invite public comments on the proposed inclusion of the place in the National Heritage List.

The Minister must make plans to protect and manage the National Heritage values of National Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

The Commonwealth must try to prepare and implement plans for managing other National Heritage places, in co-operation with the States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to National Heritage places in States and Territories.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of National Heritage places.

Note: Section 15B prohibits an action that has a significant impact on the National Heritage values of a National Heritage place, unless the person taking the action has the approval of the Minister or certain other requirements are met.

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Subdivision B—The National Heritage List

324C The National Heritage List

(1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision and Subdivisions BA, BB and BC. The record is called the ***National Heritage List***.

(2) A place may be included in the National Heritage List only if:
  (a) the place is within the Australian jurisdiction; and
  (b) the Minister is satisfied that the place has one or more National Heritage values (subject to the provisions in Subdivision BB about the emergency process).

(3) A place that is included in the National Heritage List is called a ***National Heritage place***.

(4) The National Heritage List is not a legislative instrument.

324D Meaning of *National Heritage values*

(1) A place has a ***National Heritage value*** if and only if the place meets one of the criteria (the ***National Heritage criteria***) prescribed by the regulations for the purposes of this section. The ***National Heritage value*** of the place is the place's heritage value that causes the place to meet the criterion.

(2) The ***National Heritage values*** of a National Heritage place are the National Heritage values of the place included in the National Heritage List for the place.

(3) The regulations must prescribe criteria for the following:
  (a) natural heritage values of places;
  (b) indigenous heritage values of places;
  (c) historic heritage values of places.

The regulations may prescribe criteria for other heritage values of places.

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(4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
  (a) natural heritage values of places;
  (b) indigenous heritage values of places;
  (c) historic heritage values of places;
  (d) other heritage values of places.

Subdivision BA—Inclusion of places in the National Heritage List: usual process

324E Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for the inclusion of places in the National Heritage List.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 324G).

The usual process involves the following steps for each assessment period:

(a) the Minister may determine heritage themes (this step is optional) (see section 324H);

(b) the Minister invites people to nominate places for inclusion in the National Heritage List, and gives the nominations to the Australian Heritage Council (see sections 324J and 324JA);

(c) the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will mostly be places that have been nominated) that it thinks should be assessed (see sections 324JB, 324JC and 324JD);

(d) the Minister finalises the list of places that are to be assessed (see sections 324JE and 324JF);

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(e) the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 324JG);

(f) the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 324JH and 324JI);

(g) the Minister decides whether a place that has been assessed should be included in the National Heritage List (see section 324JJ).

The steps mentioned in paragraphs (a) to (d) will generally be completed before the start of the assessment period.

324F Definitions

In this Subdivision:

assessment period has the meaning given by subsection 324G(1).

eligible for assessment consideration, in relation to an assessment period, has the meaning given by subsection 324JB(3).

finalised priority assessment list for an assessment period has the meaning given by subsection 324JE(4).

proposed priority assessment list for an assessment period has the meaning given by subsection 324JB(1).

324G Meaning of *assessment period*

(1) For the purposes of this Subdivision, each of the following is an ***assessment period***:

(a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph;

(b) each period of 12 months starting on an anniversary of the day so determined.

(2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day

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so determined must not be more than 12 months after that commencement.

(3) A determination under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the determination. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

324H Minister may determine heritage themes for an assessment period

(1) Before the Minister invites nominations for an assessment period under section 324J, the Minister may determine one or more heritage themes that the Minister considers should be given priority in relation to the assessment period.

(2) The Minister may request advice from the Australian Heritage Council for the purpose of making a determination under subsection (1), and may have regard to any advice the Council provides in response to the request.

(3) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

324J Minister to invite nominations for each assessment period

(1) Before the start of each assessment period, the Minister must publish a notice inviting people to nominate places for inclusion in the National Heritage List.

(2) A notice under subsection (1):

(a) must be published in accordance with the regulations referred to in paragraph (3)(a); and

(b) must invite people to nominate, to the Minister, places for inclusion in the National Heritage List; and

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(c) must identify the assessment period to which the notice relates; and

(d) must specify a date (the ***cut-off date***) by which nominations must be received, which must be at least 40 business days after the notice has been published as required by paragraph (a); and

(e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and

(f) may also include:

(i) information related to any heritage themes that the Minister has determined under section 324H should be given priority in relation to the assessment period; and

(ii) any other information that the Minister considers appropriate.

(3) The regulations must provide for the following:

(a) how a notice under subsection (1) is to be published;

(b) the manner and form for making nominations;

(c) what information is to be included in a nomination.

324JA Minister to give nominations to Australian Heritage Council

Nominations in relation to first assessment period

(1) Within 30 business days after the cut-off date specified in the notice under subsection 324J(1) for the first assessment period, the Minister must give the Australian Heritage Council the nominations that the Minister:

(a) had received before the end of that cut-off date; and

(b) had not already requested the Australian Heritage Council, under section 324E (as in force before the commencement of this section), to assess; and

(c) had not already rejected under section 324E (as in force before the commencement of this section); and

(d) does not reject under subsection (4).

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(2) Subsection (1) does not apply to a nomination of a place if:
  (a) the place is outside the Australian jurisdiction; or
  (b) the Minister had, before the commencement of this section, included the place in the National Heritage List under section 324F (as in force before the commencement of this section).

Nominations in relation to later assessment periods

(3) Within 30 business days after the cut-off date (the ***current cut-off date***) specified in the notice under subsection 324J(1) for an assessment period (other than the first), the Minister must give the Australian Heritage Council the nominations that were received by the Minister in the period:
  (a) starting immediately after the end of the cut-off date specified in the notice under subsection 324J(1) for the immediately preceding assessment period; and
  (b) ending at the end of the current cut-off date;

other than any such nominations that the Minister rejects under subsection (4).

Minister may reject nominations

(4) The Minister may, in writing, reject a nomination if the Minister considers that:
  (a) the nomination is vexatious, frivolous or not made in good faith; or
  (b) the Minister considers that regulations referred to in paragraph 324J(3)(b) or (c) have not been complied with in relation to the nomination.

(5) If a nomination is rejected under paragraph (4)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

Definition

(6) In this section:

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nomination means a nomination of a place for inclusion in the National Heritage List.

324JB Australian Heritage Council to prepare proposed priority assessment list

(1) Within 40 business days after the Australian Heritage Council receives the nominations as required by subsection 324JA(1) in relation to an assessment period, the Council must prepare and give to the Minister a list (the ***proposed priority assessment list***) for the assessment period.

(2) The proposed priority assessment list is to consist of such of the places that are eligible for assessment consideration in relation to the assessment period as the Australian Heritage Council considers it appropriate to include in the list, having regard to:

(a) any heritage themes determined by the Minister under section 324H in relation to the assessment period; and

(b) the Council's own views about what should be given priority in relation to the assessment period; and

(c) the Council's capacity to make assessments under this Division while still performing its other functions; and

(d) any other matters that the Council considers appropriate.

(3) A place is ***eligible for assessment consideration*** in relation to the assessment period if:

(a) the place has been nominated by a nomination referred to in subsection (1); or

(b) the Council itself wishes to nominate the place for inclusion in the National Heritage List; or

(c) the place was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) but was not included in the finalised priority assessment list for that assessment period; or

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(d) each part of the place is either a place to which paragraph (a) applies, a place to which paragraph (b) applies or a place to which paragraph (c) applies.

(4) Without limiting the generality of the Australian Heritage Council's discretion under subsection (2), the Council does not have to include in the proposed priority assessment list a place that has been nominated if the Council considers that it is unlikely that the place has any National Heritage values. For this purpose, the Council is not required to have regard to any information beyond the information that was included in the nomination.

(5) The proposed priority assessment list is not a legislative instrument.

324JC Matters to be included in proposed priority assessment list

(1) The proposed priority assessment list for an assessment period is to include, for each place in the list:
(a) a description of the place; and
(b) an assessment completion time; and
(c) any other information required by the regulations.

(2) The assessment completion time for a place must be either:
(a) a time that is at or before the end of the assessment period to which the list relates; or
(b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period).

324JD Statement to be given to Minister with proposed priority assessment list

(1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to:

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(a) for each place that is included in the list—why the Council included the place in the list; and

(b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 324JB(3)(a) or (c)—why the Council did not include the place in the list.

(2) The statement must also identify, as places nominated by the Australian Heritage Council:

(a) any places that are included in the list because the Council itself wishes to nominate them (see paragraph 324JB(3)(b)); and

(b) any places that are included in the list because of paragraph 324JB(3)(d) that consist of one or more places to which paragraph 324JB(3)(b) applies.

324JE The finalised priority assessment list

(1) Within 20 business days after the Minister, under section 324JB, receives the proposed priority assessment list for an assessment period, the Minister may, in writing, make changes to the list as mentioned in subsection (2).

(2) The changes the Minister may make are as follows:

(a) including a place in the list (and also including the matters referred to in subsection 324JC(1));

(b) omitting a place from the list (and also omitting the matters referred to in subsection 324JC(1));

(c) changing the assessment completion time for a place in the list;

(d) any other changes of a kind permitted by the regulations.

(3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.

(4) At the end of the period of 20 business days referred to in subsection (1), the list, as changed (if at all) by the Minister,

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becomes the ***finalised priority assessment list*** for the assessment period.

(5) The Minister must notify the Australian Heritage Council of all changes that the Minister makes to the list.

(6) The finalised priority assessment list is not a legislative instrument.

324JF Publication of finalised priority assessment list

(1) The Australian Heritage Council must publish the finalised priority assessment list for an assessment period on the internet.

(2) The Australian Heritage Council must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

324JG Australian Heritage Council to invite comments on places in finalised priority assessment list

(1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must publish a notice inviting people to make comments on the place.

(2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.

(3) A notice under subsection (1), in relation to a place or places:
  (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
  (b) must identify the place or places to which the notice relates; and
  (c) must invite people to make comments, to the Australian Heritage Council, about:
    (i) whether the place or places meet any of the National Heritage criteria; and

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(ii) whether the place or places should be included in the National Heritage List; and

(d) must specify the date (the ***cut-off date***) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and

(e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and

(f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and

(g) may also include any other information that the Australian Heritage Council considers appropriate.

(4) The regulations must provide for the following:

(a) how a notice under subsection (1) is to be published;

(b) the manner and form for making comments.

324JH Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister

(1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must (by the time required by section 324JI):

(a) make a written assessment whether the place meets any of the National Heritage criteria; and

(b) give to the Minister:

(i) the written assessment (or a copy of it); and

(ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).

(2) In making an assessment in relation to a place, the Australian Heritage Council, subject to subsections (3) and (4):

(a) must take into account the comments the Council receives in response to the notice under subsection 324JG(1) in relation to the place; and

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(b) may take into account the comments the Council receives in response to the opportunity referred to in paragraph (5)(c); and

(c) may seek, and have regard to, information or advice from any source.

(3) The Australian Heritage Council is not required to take a comment referred to in paragraph (2)(a) into account if:

(a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 324JG(1) in relation to the place; or

(b) the Council considers that regulations referred to in paragraph 324JG(4)(b) have not been complied with in relation to the comment.

(4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets any of the National Heritage criteria.

(5) If, in making an assessment, the Australian Heritage Council considers that a place might have one or more National Heritage values, the Council must:

(a) take all practicable steps:

(i) to identify each person who is an owner or occupier of all or part of the place; and

(ii) if the Council considers the place might have an indigenous heritage value—to identify each Indigenous person who has rights or interests in all or part of the place; and

(b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the National Heritage criteria; and

(c) give persons advised at least 20 business days to comment in writing whether the place should be included in the National Heritage List.

(6) If the Australian Heritage Council is satisfied that there are likely to be at least 50 persons referred to in subparagraph (5)(a)(i), the

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Council may satisfy the requirements of subsection (5) in relation to those persons by including the information referred to in paragraphs (5)(b) and (c) in one or more of the following:

(a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;

(b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place;

(c) displays in public buildings at or near the place.

(7) If:

(a) the Australian Heritage Council considers that the place might have an indigenous heritage value; and

(b) there are Indigenous persons who:

(i) have rights or interests in all or part of the place; and

(ii) are neither owners nor occupiers of all or part of the place; and

(c) the Australian Heritage Council is satisfied that there is a body, or there are bodies, that can appropriately represent those Indigenous persons in relation to those rights and interests;

the Australian Heritage Council may satisfy the requirements of subsection (5) in relation to those Indigenous persons by giving the information referred to in paragraphs (5)(b) and (c) to that body or those bodies.

324JI Time by which assessments to be provided to Minister

(1) Subsection 324JH(1) must be complied with, in relation to a place included in the finalised priority assessment list for an assessment period, by the assessment completion time specified in the list for the place, or by that time as extended under this section.

(2) The Australian Heritage Council may request the Minister to extend the assessment completion time (or that time as previously extended) if the Council considers that it needs more time to make the assessment.

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(3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.

(4) An extension under subsection (3) must be made in writing.

(5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

324JJ Decision about inclusion of a place in the National Heritage List

Minister to decide whether or not to include place

(1) After receiving from the Australian Heritage Council an assessment under section 324JH whether a place (the ***assessed place***) meets any of the National Heritage criteria, the Minister must:

(a) by instrument published in the *Gazette*, include in the National Heritage List:

(i) the assessed place or a part of the assessed place; and

(ii) the National Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or

(b) in writing, decide not to include the assessed place in the National Heritage List.

Note: The Minister may include a place in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values (see subsection 324C(2)).

(2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.

(3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).

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(4) Particulars of an extension or further extension under subsection (3) must be published on the internet and in any other way required by the regulations.

(5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:

(a) the Minister must have regard to:

(i) the Australian Heritage Council's assessment whether the assessed place meets any of the National Heritage criteria; and

(ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and

(b) the Minister may seek, and have regard to, information or advice from any source.

Additional requirements if Minister decides to include place

(6) If the Minister includes the assessed place, or a part of the assessed place (the ***listed part of the assessed place***), in the National Heritage List, he or she must, within a reasonable time:

(a) take all practicable steps to:

(i) identify each person who is an owner or occupier of all or part of the assessed place; and

(ii) advise each person identified that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and

(b) if the assessed place:

(i) was nominated; or

(ii) was included in a place that was nominated; or

(iii) includes a place that was nominated;

by a person in response to a notice under subsection 324J(1)—advise the person that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and

(c) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and

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(d) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.

(7) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (6)(a)(i), the Minister may satisfy the requirements of paragraph (6)(a) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

(a) advertisements in a newspaper, or newspapers, circulating in the area in which the assessed place is located;

(b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the assessed place;

(c) displays in public buildings at or near the assessed place.

Additional requirements if Minister decides not to include place

(8) If the Minister decides not to include the assessed place in the National Heritage List, the Minister must, within 10 business days after making the decision:

(a) publish the decision on the internet; and

(b) if the assessed place:

(i) was nominated; or

(ii) was included in a place that was nominated; or

(iii) includes a place that was nominated;

by a person in response to a notice under subsection 324J(1)—advise the person of the decision, and of the reasons for the decision.

Note: Subsection (8) applies in a case where the Minister decides that none of the assessed place is to be included in the National Heritage List.

Subdivision BB—Inclusion of places in the National Heritage List: emergency process

324JK Simplified outline

The following is a simplified outline of this Subdivision:

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This Subdivision sets out the emergency process for the inclusion of places in the National Heritage List.

The emergency process involves the following steps:

(a) the Minister may include a place in the National Heritage List if it is under threat (see section 324JL);

(b) the Minister asks the Australian Heritage Council to assess the place (see section 324JM);

(c) the Australian Heritage Council publishes notice of the listing and invites comments (see section 324JN);

(d) the Australian Heritage Council assesses the place, and gives the assessment to the Minister (see sections 324JO and 324JP);

(e) the Minister has 12 months from the listing of the place to decide whether it should continue to be listed, and the listing will lapse if the Minister does not make a decision within that period (see section 324JQ).

324JL Minister may include place in National Heritage List if under threat

(1) If the Minister believes that:

(a) a place has or may have one or more National Heritage values; and

(b) any of those values is under threat of a significant adverse impact; and

(c) that threat is both likely and imminent;

the Minister may, by instrument published in the *Gazette*, include in the National Heritage List the place and the National Heritage values the Minister believes the place has or may have.

(2) If:

(a) the place is included in the National Heritage List under subsection (1); and

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(b) before that inclusion of the place, the place was being considered for inclusion in the List under the process set out in Subdivision BA;

that process ceases to apply to the place when it is included in the List under subsection (1).

Note: Subsection (2) does not prevent the process in Subdivision BA again starting to apply to the place if (for example) the place ceases to be listed because of subsection 324JQ(1) or (4) and a person subsequently nominates the place under that Subdivision.

(3) If the place is included in the National Heritage List under subsection (1), the Minister must:

(a) within 10 business days after the inclusion of the place, publish a copy of the instrument under subsection (1):

(i) on the internet; and

(ii) in accordance with any other requirements specified in the regulations; and

(b) take all practicable steps to:

(i) identify each person who is an owner or occupier of all or part of the place; and

(ii) advise each person identified that the place has been included in the National Heritage List.

(4) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (3)(b)(i), the Minister may satisfy the requirements of paragraph (3)(b) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

(a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;

(b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place;

(c) displays in public buildings at or near the place.

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324JM Minister to ask Australian Heritage Council for assessment

(1) If the Minister includes a place in the National Heritage List under section 324JL, the Minister must, in writing, request the Australian Heritage Council to give the Minister an assessment of whether the place meets any of the National Heritage criteria.

(2) The request must specify the assessment completion time for the assessment.

Note: When specifying an assessment completion time, the 12-month period referred to in subsection 324JQ(1) should be considered.

324JN Publication of listing of place and inviting comments

(1) If the Australian Heritage Council receives a request under subsection 324JM(1) in relation to a place that has been included in the National Heritage List, the Council must publish a notice inviting people to comment on the listing of the place.

(2) A notice under subsection (1) in relation to a place:
  (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
  (b) must contain the following:
    (i) a description of the place;
    (ii) a statement that the place has been included in the National Heritage List, and that specifies the National Heritage values that have been included in the List in relation to the place;
    (iii) the date on which the place was so included; and
  (c) must invite people to make comments, to the Australian Heritage Council, about:
    (i) whether the place meets any of the National Heritage criteria; and
    (ii) whether the place should continue to be included in the National Heritage List; and
  (d) must specify the date (the ***cut-off date***) by which comments must be received, which must be at least 30 business days

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after the notice has been published as required by paragraph (a); and

(e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (3)(b), apply to making comments.

(3) The regulations may provide for either or both of the following:

(a) how a notice under subsection (1) is to be published;

(b) the manner and form for making comments.

324JO Australian Heritage Council to assess place and give assessment to Minister

(1) Section 324JH applies in relation to a request under subsection 324JM(1) as if:

(a) a reference in section 324JH to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and

(b) a reference in section 324JH to the notice under subsection 324JG(1) in relation to the place were a reference to the notice under subsection 324JN(1) in relation to the place; and

(c) a reference in section 324JH to regulations referred to in paragraph 324JG(4)(b) were a reference to regulations referred to in paragraph 324JN(3)(b); and

(d) a reference in section 324JH to whether the place should be included in the National Heritage List were a reference to whether the place should continue to be included in the National Heritage List.

(2) A reference in another provision of this Act to section 324JH, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

324JP Time by which assessments to be provided to Minister

(1) Section 324JI applies in relation to a request under subsection 324JM(1) as if:

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(a) a reference in section 324JI to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and

(b) a reference in section 324JI to the assessment completion time specified in the list for the place were a reference to the assessment completion time specified in the request.

(2) A reference in another provision of this Act to section 324JI, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

324JQ Decision about place remaining in the National Heritage List

Minister to decide whether place should remain listed

(1) Within 12 months after the inclusion of a place in the National Heritage List under section 324JL, the Minister must, by instrument published in the *Gazette*, subject to subsections (2) and (3):

(a) do one of the following:

(i) state that the place remains in the National Heritage List with its boundary unaltered;

(ii) alter the boundary of the place described in the National Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);

(iii) remove from the National Heritage List the place and its National Heritage values; and

(b) if the place is not removed from the National Heritage List under subparagraph (a)(iii)—do all or any of the following:

(i) state that specified National Heritage values included in the List under section 324JL for the place remain in the List for the place;

(ii) include in the List for the place specified National Heritage values of the place that were not included in the List under section 324JL for the place;

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(iii) remove from the List for the place specified National Heritage values that were included in the List under section 324JL for the place.

(2) The Minister must not take action under subsection (1) unless the Minister has received an assessment from the Australian Heritage Council under section 324JH in relation to the place.

(3) The Minister must not take action under subsection (1) that results in the place remaining in the National Heritage List (whether or not with the same or a different boundary) unless the Minister is satisfied that the place has one or more National Heritage values.

Listing lapses automatically if action not taken within 12 months of listing

(4) If the Minister does not take action under subsection (1) within the period referred to in that subsection, the place, and its listed National Heritage values, are automatically removed from the National Heritage List, by force of this subsection, at the end of that period.

Note: This subsection applies even if the Minister is prevented from taking action under subsection (1) because of subsection (2).

Matters to be considered

(5) For the purpose of deciding what action to take under subsection (1) in relation to the place:

(a) the Minister must have regard to:

(i) the Australian Heritage Council's assessment whether the place meets any of the National Heritage criteria; and

(ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and

(b) the Minister may seek, and have regard to, information or advice from any source.

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Disapplying section 324L

(6) Section 324L does not apply to:

(a) an alteration of the boundary of the place, under subparagraph (1)(a)(ii) of this section, that has the effect of removing part of the place from the National Heritage List; or

(b) the removal of the place and its National Heritage values under subparagraph (1)(a)(iii) of this section; or

(c) the removal of a National Heritage value of the place under subparagraph (1)(b)(iii) of this section.

Minister to publish copy or summary of subsection (1) notice

(7) The Minister must publish a copy or summary of the instrument referred to in subsection (1). The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way that the Minister considers appropriate.

Additional requirements if place etc. is removed under subsection (1)

(8) If, under subsection (1), the Minister removes from the National Heritage List the place or a National Heritage value of the place, or alters the boundary of the place described in the List, the Minister must, within 10 business days after the removal or alteration:

(a) publish a copy of the instrument referred to in subsection (1) on the internet; and

(b) advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal or alteration.

Note: For the obligation to identify owners or occupiers, see subsection 324JL(3).

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Requirements if place is removed under subsection (4)

(9) If, under subsection (4), the place, and its listed National Heritage values, are removed from the National Heritage List, the Minister must, within 10 business days after the removal:

(a) publish notice of the removal on the internet; and

(b) advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal.

Note: For the obligation to identify owners or occupiers, see subsection 324JL(3).

Alternative methods of notifying owners and occupiers

(10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Minister may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

(a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;

(b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place;

(c) displays in public buildings at or near the place.

Subdivision BC—Other provisions relating to the National Heritage List

324JR Co-ordination with Scientific Committee—Council undertaking assessment

(1) This section applies if:

(a) the Australian Heritage Council undertakes an assessment of a place under Subdivision BA or Subdivision BB; and

(b) before giving the assessment to the Minister, the Council becomes aware that:

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(i) the Scientific Committee is undertaking, or has undertaken, an assessment under Division 1 of Part 13; and

(ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).

(2) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.

(3) Before the Australian Heritage Council gives an assessment of the place to the Minister under Subdivision BA or Subdivision BB, the Council must comply with subsection (4) or (6).

(4) If the Scientific Committee has not yet given the Minister an assessment that deals with that matter, the Australian Heritage Council must:

(a) give the Scientific Committee a copy of the assessment of the place that the Council proposes to give to the Minister; and

(b) invite the Scientific Committee to give the Council its comments in relation to that matter; and

(c) take into account, in finalising the assessment of the place that the Council gives the Minister, any comments that the Scientific Committee makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.

(5) If the Australian Heritage Council gives the Scientific Committee a copy of a proposed assessment of a place under paragraph (4)(a), the Council must also give the Scientific Committee a copy of the assessment of that place that the Council gives the Minister.

(6) If:

(a) the Scientific Committee has already given the Minister an assessment that deals with that matter; and

(b) the Australian Heritage Council has been given a copy of that assessment;

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the Australian Heritage Council must take that assessment into account in finalising the assessment of the place that the Council gives the Minister.

(7) If, under section 194S or 194T, the Scientific Committee gives the Australian Heritage Council a proposed assessment, or an assessment, that deals with a particular matter because the Council is undertaking an assessment that deals with that matter, a member of the Council may discuss that matter with a member of the Scientific Committee.

(8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 324R.

324JS Co-ordination with Scientific Committee—Council given assessment to Minister

(1) This section applies if:
  (a) the Australian Heritage Council has given to the Minister an assessment of a place under Subdivision BA or Subdivision BB; and
  (b) the Council is aware that:
    (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and
    (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).

(2) The Australian Heritage Council must, within 7 days after becoming aware as referred to in paragraph (1)(b):
  (a) ensure the Scientific Committee is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
  (b) give the Scientific Committee a copy of the assessment.

(3) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.

(4) Subsections (2) and (3) have effect despite section 324R.

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324K Listing process not affected by changing boundaries of a place

(1) This section is about compliance with a provision of Subdivision BA or BB that requires or permits an act to be done in relation to the place identified by express or implied reference to an earlier provision of that Subdivision.

(2) It is sufficient compliance with the provision if the act is done in relation to a place whose boundary overlaps the boundary of the place identified by reference to the earlier provision.

(3) This section does not affect the validity of the act so far as that depends on something other than the act being done in relation to the place.

324L Removal of places or National Heritage values from the National Heritage List

(1) The Minister may remove all or part of a place from the National Heritage List only if the Minister is satisfied that:

(a) ignoring subsection 324D(2), the place no longer has any National Heritage values or the part no longer contributes to any of the National Heritage values of the place; or

(b) it is necessary in the interests of Australia's defence or security to do so.

Note: A place or part of a place may also be removed from the National Heritage List under subsection 324JQ(1).

(2) The Minister may remove one or more National Heritage values included in the National Heritage List for a National Heritage place only if the Minister is satisfied that:

(a) ignoring subsection 324D(2), the place no longer has the National Heritage value or values; or

(b) it is necessary in the interests of Australia's defence or security to do so.

(3) The Minister may remove all or part of a place, or a National Heritage value of a place, only by an instrument including a statement of the reasons for the removal.

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Note 1: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).

Note 2: For requirements relating to the instrument under the *Legislation Act 2003*, see subsections (5) and (6) of this section.

(4) The instrument must deal with only one of the following kinds of removal:

(a) removal (***removal for loss of value***) of a place, part or National Heritage value because of paragraph (1)(a) or (2)(a);

(b) removal of a place, part or National Heritage value because of paragraph (1)(b) or (2)(b).

If the instrument purports to deal with both kinds, it has no effect so far as it deals with a removal for loss of value.

(5) If the instrument deals only with removal for loss of value:

(a) it is a legislative instrument; and

(b) it takes effect on the first day it is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.

(6) If subsection (5) does not apply to the instrument, it is a notifiable instrument.

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunsetting under that Act.

324M Minister must consider advice of the Australian Heritage Council and public comments

(1) Before the Minister removes from the National Heritage List under section 324L all or part of a place or one or more of a place's National Heritage values in a removal for loss of value, the Minister must:

(a) give the Chair of the Australian Heritage Council a written request for the Council to give the Minister advice on the proposed removal; and

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(b) publish, on the internet, in a daily newspaper circulating in each State and self-governing Territory and in each other way required by the regulations (if any), a notice:

(i) describing the proposed removal; and

(ii) inviting anyone to give the Minister comments, within 20 business days, on the proposed removal.

The Minister must publish the notice within 20 business days of giving the request.

(2) The Australian Heritage Council must give the advice to the Minister within the period specified by the Minister.

(3) The Minister must consider the advice, if he or she receives it by the end of that period, and the comments (if any) received in accordance with the notice.

(4) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the National Heritage values of the place concerned.

(5) The Minister must:

(a) decide whether to remove from the National Heritage List the place or part concerned, or the National Heritage value or values of the place concerned; and

(b) if the Minister decides to remove the place or part, or the National Heritage value or values of the place—ensure that an instrument removing the place, part or National Heritage value or values is made under subsection 324L(3);

within 60 business days after the earlier of the advice being received by the Minister and the specified period for giving advice to the Minister ending.

324N Specifying one or more additional National Heritage values for a National Heritage place

(1) The regulations may make provision for, or in relation to, the specification in the National Heritage List of additional National Heritage values in relation to National Heritage places.

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(2) Without limiting the generality of subsection (1), regulations may make provision as mentioned in that subsection by specifying modifications of provisions of this Act. However, regulations must not:

(a) increase, or have the effect of increasing, the maximum penalty for any offence; or

(b) widen, or have the effect of widening, the scope of any offence.

324P National Heritage List must be publicly available

The Minister must ensure that:

(a) up-to-date copies of the National Heritage List are available for free to the public on request; and

(b) an up-to-date copy of the National Heritage List is available on the internet.

Note: The copies of the National Heritage List made publicly available may not contain certain information kept confidential under section 324Q.

324Q Certain information may be kept confidential

(1) This section applies if the Minister considers that the heritage values of a place could be significantly damaged by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:

(a) the place's precise location;

(b) the place's heritage values;

(c) any other information about the place.

(2) It is sufficient compliance with this Act if only a general description of the place, its location or its National Heritage values is included in:

(a) the National Heritage List as made publicly available; or

(b) an instrument or other document created for the purposes of this Act.

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324R Disclosure of Australian Heritage Council's assessments and advice

(1) A member of the Australian Heritage Council has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council:

(a) an assessment under section 324JH whether a place meets any of the National Heritage criteria, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;

(b) advice under section 324M concerning a place or any information relating to the advice.

(2) However:

(a) the duty not to disclose a thing described in paragraph (1)(a) in relation to a place does not exist after:

(i) publication in the *Gazette* of an instrument under paragraph 324JJ(1)(a) or subsection 324JQ(1) in relation to the place; or

(ii) the Minister decides under paragraph 324JJ(1)(b) not to include the place in the National Heritage List; and

(b) the duty not to disclose a thing described in paragraph (1)(b) in relation to a place does not exist after:

(i) registration under the *Legislation Act 2003* of a legislative instrument under section 324L relating to the place; or

(ii) the Minister decides under section 324M not to remove the place or a part of the place, or one or more of the place's National Heritage values, from the National Heritage List.

(2A) This section does not prevent the Australian Heritage Council from informing a person, or having discussions with a person, about the consequences that result or may result from:

(a) a place being, or not being, included in the National Heritage List; or

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(b) National Heritage values of a place being, or not being, included in the List; or

(c) a place or part of a place, or one or more National Heritage values of a place, being removed from the List.

(2B) Subsection (1) does not apply to a disclosure of particular information if:

(a) the Chair of the Australian Heritage Council requests the Minister to give permission to disclose that information to a particular person (or persons within a particular group of persons); and

(b) the Minister gives that permission; and

(c) the disclosure is made to that person (or a person within that group).

(3) After a member of the Australian Heritage Council has ceased under subsection (2) to have a duty not to disclose:

(a) an assessment under section 324JH whether a place meets the National Heritage criteria; or

(b) advice under section 324M concerning a place;

the member must give a copy of the assessment or advice to anyone who asks for it.

(4) If:

(a) a member of the Australian Heritage Council proposes to give a person under subsection (3) a copy of an assessment or advice relating to a place; and

(b) the member is aware that, under section 324Q, it would be sufficient compliance with this Act if the copy included only a general description of the place, its location or its National Heritage values;

the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

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Subdivision C—Management plans for National Heritage places in Commonwealth areas

324S Management plans for National Heritage places in Commonwealth areas

(1) The Minister must make a written plan to protect and manage the National Heritage values of each National Heritage place that is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the first time the place satisfies both of the following paragraphs:

(a) the place is included in the National Heritage List;

(b) the place is entirely within one or more Commonwealth areas.

Note: However, section 324T precludes the Minister from making plans for managing certain places.

(2) The Minister may, in writing, amend a plan or revoke and replace a plan.

(3) The Minister must give notice, in accordance with the regulations, if the Minister:

(a) makes a plan for a National Heritage place; or

(b) amends such a plan; or

(c) revokes and replaces such a plan.

(4) A plan must:

(a) address the matters prescribed by the regulations; and

(b) not be inconsistent with the National Heritage management principles (see Subdivision E).

(5) If the National Heritage management principles change so that a plan (the ***earlier plan***) is inconsistent with them, the Minister must as soon as practicable make a written instrument:

(a) amending the earlier plan to make it consistent with the principles; or

(b) revoking and replacing the earlier plan.

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(6) Before making, amending or revoking and replacing a plan, the Minister must:

(a) seek in accordance with the regulations, and consider, comments from anyone about the matters to be addressed by the proposed plan or amendment; and

(b) seek and consider comments from the Australian Heritage Council about those matters.

(7) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument.

324T Restriction on ability to make plans

Despite section 324S, the Minister must not make a plan for managing so much of a National Heritage place as is in a Commonwealth reserve and covered by another plan under this Act.

324U Compliance with plans by the Commonwealth and Commonwealth agencies

(1) The Commonwealth or a Commonwealth agency must not:

(a) contravene a plan made under section 324S; or

(b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.

(2) If there is no plan in force under section 324S for a particular National Heritage place described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the place are not inconsistent with the National Heritage management principles.

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324V Multiple plans in the same document

To avoid doubt, a plan for managing a National Heritage place may be in the same document as:

(a) one or more other plans for managing National Heritage places; or

(b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

324W Review of plans at least every 5 years

(1) At least once in every 5 year period after a plan for managing a National Heritage place is made under section 324S, the Minister must cause a review of the plan to be carried out.

(2) The review must:

(a) assess whether the plan is consistent with the National Heritage management principles in force at the time; and

(b) assess whether the plan is effective in protecting and conserving the National Heritage values of the place; and

(c) make recommendations for the improved protection of the National Heritage values of the place.

(3) The person carrying out the review must publish, on the internet and in a daily newspaper circulating in each State and self-governing Territory, a notice inviting anyone to give the person comments within 20 business days on:

(a) whether the plan is consistent with the National Heritage management principles; and

(b) the effectiveness of the plan in protecting and conserving the National Heritage values of the place.

(4) In carrying out the review, the person must consider the comments (if any) received in accordance with the notice.

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Subdivision D—Management of National Heritage places in States and self-governing Territories

324X Plans and Commonwealth responsibilities

(1) This section applies to a National Heritage place that is not entirely within one or more Commonwealth areas and is:

(a) in a State; or

(b) in a self-governing Territory; or

(c) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*.

(2) The Commonwealth must use its best endeavours to ensure a plan for managing the place, that is not inconsistent with the National Heritage management principles, is prepared and implemented in co-operation with the State or Territory.

(2A) Subsection (2) does not apply in relation to so much of a place as is in the Great Barrier Reef Marine Park.

Note: A zoning plan must be prepared under the *Great Barrier Reef Marine Park Act 1975* for areas that are part of the Great Barrier Reef Marine Park. In preparing a zoning plan, regard must be had to the National Heritage management principles.

(3) The Commonwealth, and each Commonwealth agency, must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the place in a way that is not inconsistent with:

(a) the National Heritage management principles; or

(b) the plan for managing the place, if one has been prepared under subsection (2).

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Subdivision E—The National Heritage management principles

324Y National Heritage management principles

(1) The regulations must prescribe principles for managing National Heritage places. The principles prescribed are the ***National Heritage management principles***.

(2) The regulations may prescribe obligations to implement or give effect to the National Heritage management principles if the obligations relate to:

(a) a constitutional corporation, the Commonwealth or a Commonwealth agency; or

(b) trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and Territory; or

(iv) between 2 Territories; or

(c) either or both of the following:

(i) a Commonwealth area;

(ii) a Territory; or

(d) the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place; or

(e) the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

(3) A person must comply with the regulations to the extent that they impose obligations on the person.

(4) Paragraph (2)(e) applies only to a prescribed obligation that is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention.

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Subdivision F—Obligations of Commonwealth agencies

324Z Obligation to assist the Minister and the Australian Heritage Council

(1) A Commonwealth agency that owns or controls a place that has, or might have, one or more National Heritage values must take all reasonable steps to assist the Minister and the Australian Heritage Council in the identification, assessment and monitoring of the place's National Heritage values.

(2) A Commonwealth agency that owns or controls all or part of a National Heritage place must take all reasonable steps to assist the Minister to make a plan under section 324S for the place.

324ZA Protecting National Heritage values of places sold or leased

(1) This section applies if a Commonwealth agency executes a contract for the sale or lease to someone else of a Commonwealth area in the Australian jurisdiction that is or includes all or part of a National Heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.

(1A) The Commonwealth agency must give the Minister at least 40 business days' notice before executing the contract.

(2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the National Heritage values of the place, unless the agency is satisfied that:

(a) having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable; or

(b) including such a covenant in the contract is impracticable.

(3) The Commonwealth agency must inform the Minister before executing the contract if:

(a) such a covenant:

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(i) would not, or could not be made to, bind the successors in title of the buyer or lessee; or

(ii) could be insufficient to ensure the ongoing protection of the National Heritage values of the place; or

(b) the agency is satisfied as described in subsection (2).

The information must include written reasons why paragraph (a) applies or why the agency is satisfied as described in subsection (2).

(4) If the Minister is informed of a matter in paragraph (3)(a) or that the Commonwealth agency is satisfied that it is unreasonable or impracticable to include such a covenant in the contract, the Minister must:

(a) take all reasonable measures to enter into a conservation agreement with the prospective buyer or lessee for the protection and conservation of the National Heritage values of the place; or

(b) advise the agency about measures to ensure the ongoing protection of the National Heritage values of the place.

(5) If the Minister is informed that the Commonwealth agency is satisfied that it is unnecessary to include such a covenant in the contract, the Minister may advise the agency about measures to ensure the ongoing protection of the National Heritage values of the place.

(6) If the Minister advises the Commonwealth agency under this section about measures to ensure the ongoing protection of the National Heritage values of the place, the agency must take all reasonable steps to ensure that the measures are taken.

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Subdivision G—Assistance for protecting National Heritage places

324ZB Commonwealth assistance for protecting National Heritage places

(1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a National Heritage place to:
  (a) a State or self-governing Territory in which the place or part of the place is located; or
  (b) any other person.

(2) The Commonwealth may give the assistance subject to conditions.

Subdivision H—Reviewing and reporting on the National Heritage List

324ZC Reviewing and reporting on the National Heritage List

(1) At least once in every 5 year period after the National Heritage List is established, the Minister must ensure that:
  (a) a review of the National Heritage List is carried out; and
  (b) a report of that review is tabled in each House of the Parliament.

(2) The report must include details of:
  (a) the number of places included in the National Heritage List; and
  (b) any significant damage or threat to the National Heritage values of those places; and
  (c) how many plans under Subdivisions C and D for managing National Heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and
  (d) the operation of any conservation agreements under Part 14 that affect National Heritage places; and

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(e) all nominations, assessments and changes to the National Heritage List under this Division during the period of review; and

(f) compliance with this Act in relation to National Heritage places; and

(g) any other matters that the Minister considers relevant.

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Division 2—Managing wetlands of international importance

Subdivision A—Simplified outline of this Division

325 Simplified outline of this Division

The following is a simplified outline of this Division:

The Commonwealth may designate a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention only after seeking the agreement of relevant States, self-governing Territories and land-holders.

The Minister must make plans for managing wetlands listed under the Ramsar Convention that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

The Commonwealth must try to prepare and implement management plans for other wetlands listed under the Ramsar Convention, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to declared Ramsar wetlands in States and Territories.

The Commonwealth can provide assistance for the protection or conservation of declared Ramsar wetlands.

Note: Section 16 prohibits an action that has a significant impact on an internationally important wetland, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

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Subdivision B—Seeking agreement on Ramsar designation

326 Commonwealth must seek agreement before designation

(1) The Commonwealth may designate for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention a wetland containing an area owned or occupied by another person only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the other person on:

(a) the proposed designation of the wetland (so far as it relates to the area); and

(b) management arrangements for the wetland (so far as they relate to the area).

(2) The Commonwealth may designate a wetland in a State or self-governing Territory for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the State or Territory on:

(a) the proposed submission of the wetland; and

(b) management arrangements for the wetland.

(3) A failure to comply with this section does not affect the designation of a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention or the status of a wetland as a declared Ramsar wetland.

Subdivision C—Notice of designation of wetland

327 Minister must give notice of designation of wetland etc.

(1) The Minister must give notice in the *Gazette* and in the way (if any) prescribed by the regulations of any of the following events as soon as practicable after the event occurs:

(a) the Commonwealth designates a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention;

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(b) the Commonwealth extends the boundaries of a wetland it has included in the List;
(c) the Commonwealth restricts the boundaries of a wetland it has included in the List;
(d) the Commonwealth deletes from the List a wetland it previously included in the List.

(2) The notice must specify the area included in, or excluded or deleted from, the List as a result of the event.

(3) A failure to comply with this section does not affect the status of an area as a declared Ramsar wetland.

Subdivision D—Plans for listed wetlands in Commonwealth areas

328 Making plans

Minister must make plan

(1) The Minister must make a written plan for managing a wetland that is included in the List of Wetlands of International Importance kept under the Ramsar Convention and is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the wetland:
(a) is included in the List; or
(b) becomes entirely within one or more Commonwealth areas.

Amending and replacing plan

(2) The Minister may make a written plan amending, or revoking and replacing, a plan made under subsection (1) or this subsection.

Requirements for plan

(3) A plan must not be inconsistent with:
(a) Australia's obligations under the Ramsar Convention; or
(b) the Australian Ramsar management principles.

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Note: Section 335 explains what Australian Ramsar management principles are.

Ensuring plans reflect current management principles

(4) If the Australian Ramsar management principles change so that a plan (the ***earlier plan***) is inconsistent with them, the Minister must make another plan:

(a) amending the earlier plan so it is not inconsistent with them; or

(b) revoking and replacing the earlier plan.

Plan may be in same document as another plan

(5) To avoid doubt, a plan under this section for a wetland may be in the same document as:

(a) a plan under this section for another wetland; or

(b) a plan that this Act or another law of the Commonwealth requires or permits to be prepared.

Commonwealth reserves

(6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a wetland as is in a Commonwealth reserve.

Note: A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the Ramsar Convention.

329 Notice of plans

The Minister must give notice of the making of a plan under section 328, in accordance with the regulations.

330 Commonwealth compliance with plans

(1) The Commonwealth or a Commonwealth agency must not:

(a) contravene a plan made under section 328; or

(b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or

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the Commonwealth agency (as appropriate), would contravene such a plan.

(2) If there is no plan in force under section 328 for a particular wetland described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the wetland are not inconsistent with the Australian Ramsar management principles.

331 Review of plans every 5 years

(1) The Minister must cause a review of a plan made under section 328 to be carried out at least once in each period of 5 years after the plan is made.

(2) The review must consider whether the plan is consistent with the Australian Ramsar management principles in force at the time.

Note: Section 335 explains what Australian Ramsar management principles are.

Subdivision E—Management of wetlands in States and self-governing Territories

332 Application

This Subdivision applies in relation to a wetland that:

(a) is:

(i) in a State; or

(ii) in a self-governing Territory; or

(iii) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*; and

(b) is not entirely within one or more Commonwealth areas.

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333 Co-operating to prepare and implement plans

(1) This section applies in relation to a wetland that is included in the List of Wetlands of International Importance kept under the Ramsar Convention.

(2) The Commonwealth must use its best endeavours to ensure a plan for managing the wetland in a way that is not inconsistent with Australia's obligations under the Ramsar Convention or the Australian Ramsar management principles is prepared and implemented in co-operation with the State or Territory.

Note: The Commonwealth and the State or Territory could make a bilateral agreement adopting the plan and providing for its implementation.

334 Commonwealth responsibilities

(1) This section applies in relation to a wetland that is a declared Ramsar wetland.

(2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the wetland in a way that is not inconsistent with:

(a) the Ramsar Convention; and

(b) the Australian Ramsar management principles; and

(c) if the wetland is included in the List of Wetlands of International Importance kept under the Ramsar Convention and a plan for managing the property has been prepared as described in section 333—that plan.

Subdivision F—Australian Ramsar management principles

335 Australian Ramsar management principles

(1) The regulations must prescribe principles for the management of wetlands included in the List of Wetlands of International Importance kept under the Ramsar Convention. The principles prescribed are the ***Australian Ramsar management principles***.

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(2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the Ramsar Convention.

Subdivision G—Assistance for protecting wetlands

336 Commonwealth assistance for protecting declared Ramsar wetlands

(1) The Commonwealth may give financial or other assistance for the protection or conservation of a declared Ramsar wetland to:

(a) a State or self-governing Territory in which the wetland occurs; or

(b) any other person.

(2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

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Division 3—Managing Biosphere reserves

337 Definition of *Biosphere reserve*

A ***Biosphere reserve*** is an area designated for inclusion in the World Network of Biosphere Reserves by the International Co-ordinating Council of the Man and the Biosphere program of the United Nations Educational, Scientific and Cultural Organization.

338 Planning for management of Biosphere reserves

(1) The Minister may make and implement a written plan for managing a Biosphere reserve, or a part of a Biosphere reserve, entirely within one or more Commonwealth areas. The plan must not be inconsistent with the Australian Biosphere reserve management principles.

(2) The Commonwealth may co-operate with a State or self-governing Territory to prepare and implement a plan for managing a Biosphere reserve in the State or Territory. The plan must not be inconsistent with the Australian Biosphere reserve management principles.

339 Commonwealth activities in Biosphere reserves

The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that it exercises its powers and performs its functions in relation to a Biosphere reserve in a way that is not inconsistent with:

(a) the Australian Biosphere reserve management principles; or

(b) a plan prepared as described in section 338 for managing the Biosphere reserve.

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340 Australian Biosphere reserve management principles

(1) The regulations must prescribe principles for the management of Biosphere reserves. The principles prescribed are the ***Australian Biosphere reserve management principles***.

(2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with the Statutory Framework of the World Network of Biosphere Reserves established under the Man and the Biosphere program of the United Nations Educational, Scientific and Cultural Organization.

341 Commonwealth assistance for protecting Biosphere reserves

(1) The Commonwealth may give financial or other assistance for the protection or conservation of a Biosphere reserve to:

(a) a State or self-governing Territory in which the reserve or part of the reserve occurs; or

(b) any other person.

(2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

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Division 3A—Managing Commonwealth Heritage places

Subdivision A—Preliminary

341A Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may only include a place in the Commonwealth Heritage List if the place is in a Commonwealth area, or is owned or leased by the Commonwealth or a Commonwealth agency outside the Australian jurisdiction, and the Minister is satisfied that the place has one or more Commonwealth Heritage values.

The Minister must ask the Australian Heritage Council for an assessment of the place's Commonwealth Heritage values and may invite public comments on the proposed inclusion of the place in the Commonwealth Heritage List.

Commonwealth agencies must make plans to protect and manage the Commonwealth Heritage values of Commonwealth Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

Commonwealth agencies also have other obligations.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of Commonwealth Heritage places.

341B Extension to places etc. outside the Australian jurisdiction

This Division extends to places, acts and omissions outside the Australian jurisdiction, except so far as the contrary intention appears.

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Subdivision B—The Commonwealth Heritage List

341C The Commonwealth Heritage List

(1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision and Subdivisions BA, BB and BC. The record is called the ***Commonwealth Heritage List***.

(2) A place may be included in the Commonwealth Heritage List only if:

(a) the place either:

(i) is entirely within a Commonwealth area; or

(ii) is outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth Authority; and

(b) the Minister is satisfied that the place has one or more Commonwealth Heritage values (subject to the provisions in Subdivision BB about the emergency process).

(3) A place that is included in the Commonwealth Heritage List is called a ***Commonwealth Heritage place***.

(4) The Commonwealth Heritage List is not a legislative instrument.

341D Meaning of *Commonwealth Heritage values*

(1) A place has a ***Commonwealth Heritage value*** if and only if the place meets one of the criteria (the ***Commonwealth Heritage criteria***) prescribed by the regulations for the purposes of this section. The ***Commonwealth Heritage value*** of the place is the place's heritage value that causes the place to meet the criterion.

(2) The ***Commonwealth Heritage values*** of a Commonwealth Heritage place are the Commonwealth Heritage values of the place included in the Commonwealth Heritage List for the place.

(3) The regulations must prescribe criteria for the following:

(a) natural heritage values of places;

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(b) indigenous heritage values of places;
(c) historic heritage values of places.

The regulations may prescribe criteria for other heritage values of places.

(4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
(a) natural heritage values of places;
(b) indigenous heritage values of places;
(c) historic heritage values of places;
(d) other heritage values of places.

Subdivision BA—Inclusion of places in the Commonwealth Heritage List: usual process

341E Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 341G).

The usual process involves the following steps for each assessment period:

(a) the Minister invites people to nominate places for inclusion in the Commonwealth Heritage List, and gives the nominations to the Australian Heritage Council (see sections 341H and 341J);
(b) the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will mostly be places that have been nominated) that it thinks should be assessed (see sections 341JA, 341JB and 341JC);

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(c) the Minister finalises the list of places that are to be assessed (see sections 341JD and 341JE);
(d) the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 341JF);
(e) the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 341JG and 341JH);
(f) the Minister decides whether a place that has been assessed should be included in the Commonwealth Heritage List (see section 341JI).

The steps mentioned in paragraphs (a) to (c) will generally be completed before the start of the assessment period.

341F Definitions

In this Subdivision:

assessment period has the meaning given by subsection 341G(1).

eligible for assessment consideration, in relation to an assessment period, has the meaning given by subsection 341JA(3).

finalised priority assessment list for an assessment period has the meaning given by subsection 341JD(4).

proposed priority assessment list for an assessment period has the meaning given by subsection 341JA(1).

341G Meaning of *assessment period*

(1) For the purposes of this Subdivision, each of the following is an ***assessment period***:
(a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph;
(b) each period of 12 months starting on an anniversary of the day so determined.

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(2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.

(3) A determination under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the determination. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

341H Minister to invite nominations for each assessment period

(1) Before the start of each assessment period, the Minister must publish a notice inviting people to nominate places for inclusion in the Commonwealth Heritage List.

Note: For which places can be included in the Commonwealth Heritage List, see subsection 341C(2).

(2) A notice under subsection (1):

(a) must be published in accordance with the regulations referred to in paragraph (3)(a); and

(b) must invite people to nominate, to the Minister, places for inclusion in the Commonwealth Heritage List; and

(c) must identify the assessment period to which the notice relates; and

(d) must specify a date (the ***cut-off date***) by which nominations must be received, which must be at least 40 business days after the notice has been published as required by paragraph (a); and

(e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and

(f) may also include any other information that the Minister considers appropriate.

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(3) The regulations must provide for the following:
  (a) how a notice under subsection (1) is to be published;
  (b) the manner and form for making nominations;
  (c) what information is to be included in a nomination.

341J Minister to give nominations to Australian Heritage Council

Nominations in relation to first assessment period

(1) Within 30 business days after the cut-off date specified in the notice under subsection 341H(1) for the first assessment period, the Minister must give the Australian Heritage Council the nominations that the Minister:
  (a) had received before the end of that cut-off date; and
  (b) had not already requested the Australian Heritage Council, under section 341E (as in force before the commencement of this section), to assess; and
  (c) had not already rejected under section 341E (as in force before the commencement of this section); and
  (d) does not reject under subsection (4).

(2) Subsection (1) does not apply to a nomination of a place if the Minister had, before the commencement of this section, included the place in the Commonwealth Heritage List under section 341F (as in force before the commencement of this section).

Nominations in relation to later assessment periods

(3) Within 30 business days after the cut-off date (the ***current cut-off date***) specified in the notice under subsection 341H(1) for an assessment period (other than the first), the Minister must give the Australian Heritage Council the nominations that were received by the Minister in the period:
  (a) starting immediately after the end of the cut-off date specified in the notice under subsection 341H(1) for the immediately preceding assessment period; and
  (b) ending at the end of the current cut-off date;

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other than any such nominations that the Minister has rejected under subsection (4).

Minister may reject nominations

(4) The Minister may, in writing, reject a nomination if the Minister considers that:

(a) the nomination is vexatious, frivolous or not made in good faith; or

(b) the Minister considers that regulations referred to in paragraph 341H(3)(b) or (c) have not been complied with in relation to the nomination.

(5) If a nomination is rejected under paragraph (4)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

Definition

(6) In this section:

nomination means a nomination of a place for inclusion in the Commonwealth Heritage List.

341JA Australian Heritage Council to prepare proposed priority assessment list

(1) Within 40 business days after the Australian Heritage Council receives the nominations as required by subsection 341J(1) in relation to an assessment period, the Council must prepare and give to the Minister a list (the ***proposed priority assessment list***) for the assessment period.

(2) The proposed priority assessment list is to consist of such of the places that are eligible for assessment consideration in relation to the assessment period as the Australian Heritage Council considers it appropriate to include in the list, having regard to:

(a) the Council's own views about what should be given priority in relation to the assessment period; and

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(b) the Council's capacity to make assessments under this Division while still performing its other functions; and

(c) any other matters that the Council considers appropriate.

(3) A place is ***eligible for assessment consideration*** in relation to the assessment period if:

(a) the place has been nominated by a nomination referred to in subsection (1); or

(b) the Council itself wishes to nominate the place for inclusion in the Commonwealth Heritage List; or

(c) the place was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) but was not included in the finalised priority assessment list for that assessment period; or

(d) each part of the place is either a place to which paragraph (a) applies, a place to which paragraph (b) applies or a place to which paragraph (c) applies.

(4) Without limiting the generality of the Australian Heritage Council's discretion under subsection (2), the Council does not have to include in the proposed priority assessment list a place that has been nominated if the Council considers that it is unlikely that the place has any Commonwealth Heritage values. For this purpose, the Council is not required to have regard to any information beyond the information that was included in the nomination.

(5) The proposed priority assessment list is not a legislative instrument.

341JB Matters to be included in proposed priority assessment list

(1) The proposed priority assessment list for an assessment period is to include, for each place in the list:

(a) a description of the place; and

(b) an assessment completion time; and

(c) any other information required by the regulations.

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(2) The assessment completion time for a place must be either:
  (a) a time that is at or before the end of the assessment period to which the list relates; or
  (b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period).

341JC Statement to be given to Minister with proposed priority assessment list

(1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to:
  (a) for each place that is included in the list—why the Council included the place in the list; and
  (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 341JA(3)(a) or (c)—why the Council did not include the place in the list.

(2) The statement must also identify, as places nominated by the Australian Heritage Council:
  (a) any places that are included in the list because the Council itself wishes to nominate them (see paragraph 341JA(3)(b)); and
  (b) any places that are included in the list because of paragraph 341JA(3)(d) that consist of one or more places to which paragraph 341JA(3)(b) applies.

341JD The finalised priority assessment list

(1) Within 20 business days after the Minister, under section 341JA, receives the proposed priority assessment list for an assessment period, the Minister may, in writing, make changes to the list as mentioned in subsection (2).

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(2) The changes the Minister may make are as follows:
  (a) including a place in the list (and also including the matters referred to in subsection 341JA(1));
  (b) omitting a place from the list (and also omitting the matters referred to in subsection 341JA(1));
  (c) changing the assessment completion time for a place in the list;
  (d) any other changes of a kind permitted by the regulations.

(3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.

(4) At the end of the period of 20 business days referred to in subsection (1), the list, as changed (if at all) by the Minister, becomes the ***finalised priority assessment list*** for the assessment period.

(5) The Minister must notify the Australian Heritage Council of all changes that the Minister makes to the list.

(6) The finalised priority assessment list is not a legislative instrument.

341JE Publication of finalised priority assessment list

(1) The Australian Heritage Council must publish the finalised priority assessment list for an assessment period on the internet.

(2) The Australian Heritage Council must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

341JF Australian Heritage Council to invite comments on places in finalised priority assessment list

(1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must publish a notice inviting people to make comments on the place.

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(2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.

(3) A notice under subsection (1), in relation to a place or places:
  (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
  (b) must identify the place or places to which the notice relates; and
  (c) must invite people to make comments, to the Australian Heritage Council, about:
    (i) whether the place or places meet any of the Commonwealth Heritage criteria; and
    (ii) whether the place or places should be included in the Commonwealth Heritage List; and
  (d) must specify the date (the ***cut-off date***) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
  (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
  (f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and
  (g) may also include any other information that the Australian Heritage Council considers appropriate.

(4) The regulations must provide for the following:
  (a) how a notice under subsection (1) is to be published;
  (b) the manner and form for making comments.

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341JG Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister

(1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must (by the time required by section 341JH):

(a) make a written assessment whether the place meets any of the Commonwealth Heritage criteria; and

(b) give to the Minister:

(i) the written assessment (or a copy of it); and

(ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).

(2) In making an assessment in relation to a place, the Australian Heritage Council, subject to subsections (3) and (4):

(a) must take into account the comments the Council receives in response to the notice under subsection 341JF(1) in relation to the place; and

(b) may take into account the comments the Council receives in response to the opportunity referred to in paragraph (5)(c); and

(c) may seek, and have regard to, information or advice from any source.

(3) The Australian Heritage Council is not required to take a comment referred to in paragraph (2)(a) into account if:

(a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 341JF(1) in relation to the place; or

(b) the Council considers that regulations referred to in paragraph 341JF(4)(b) have not been complied with in relation to the comment.

(4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets any of the Commonwealth Heritage criteria.

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(5) If, in making an assessment, the Australian Heritage Council considers that a place within the Australian jurisdiction might have one or more Commonwealth Heritage values, the Council must:

(a) take all practicable steps:

(i) to identify each person who is an owner or occupier of all or part of the place; and

(ii) if the Council considers the place might have an indigenous heritage value—to identify each Indigenous person who has rights or interests in all or part of the place; and

(b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the Commonwealth Heritage criteria; and

(c) give persons advised at least 20 business days to comment in writing whether the place should be included in the Commonwealth Heritage List.

(6) If the Australian Heritage Council is satisfied that there are likely to be at least 50 persons referred to in subparagraph (5)(a)(i), the Council may satisfy the requirements of subsection (5) in relation to those persons by including the information referred to in paragraphs (5)(b) and (c) in one or more of the following:

(a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;

(b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place;

(c) displays in public buildings at or near the place.

(7) If:

(a) the Australian Heritage Council considers that the place might have an indigenous heritage value; and

(b) there are Indigenous persons who:

(i) have rights or interests in all or part of the place; and

(ii) are neither owners nor occupiers of all or part of the place; and

(c) the Australian Heritage Council is satisfied that there is a body, or there are bodies, that can appropriately represent

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those Indigenous persons in relation to those rights and interests;

the Australian Heritage Council may satisfy the requirements of subsection (5) in relation to those Indigenous persons by giving the information referred to in paragraphs (5)(b) and (c) to that body or those bodies.

341JH Time by which assessments to be provided to Minister

(1) Subsection 341JG(1) must be complied with, in relation to a place included in the finalised priority assessment list for an assessment period, by the assessment completion time specified in the list for the place, or by that time as extended under this section.

(2) The Australian Heritage Council may request the Minister to extend the assessment completion time (or that time as previously extended) if the Council considers that it needs more time to make the assessment.

(3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.

(4) An extension under subsection (3) must be made in writing.

(5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

341JI Decision about inclusion of a place in the Commonwealth Heritage List

Minister to decide whether or not to include place

(1) After receiving from the Australian Heritage Council an assessment under section 341JG whether a place (the ***assessed***

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place) meets any of the Commonwealth Heritage criteria, the Minister must:

(a) by instrument published in the *Gazette*, include in the Commonwealth Heritage List:

(i) the assessed place or a part of the assessed place; and

(ii) the Commonwealth Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or

(b) in writing, decide not to include the assessed place in the Commonwealth Heritage List.

Note: The Minister may include a place in the Commonwealth Heritage List only if the Minister is satisfied that the place has one or more Commonwealth Heritage values (see subsection 341C(2)).

(2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.

(3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).

(4) Particulars of an extension or further extension under subsection (3) must be published on the internet and in any other way required by regulations.

(5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:

(a) the Minister must have regard to:

(i) the Australian Heritage Council's assessment whether the assessed place meets any of the Commonwealth Heritage criteria; and

(ii) the comments (if any), a copy of which were given to the Minister under subsection 341JG(1) with the assessment; and

(b) the Minister may seek, and have regard to, information or advice from any source.

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Additional requirements if Minister decides to include place

(6) If the Minister includes the assessed place, or a part of the assessed place (the ***listed part of the assessed place***), in the Commonwealth Heritage List, he or she must, within a reasonable time:

(a) take all practicable steps to:

(i) identify each person who is an owner or occupier of all or part of the assessed place; and

(ii) advise each person identified that the assessed place, or the listed part of the assessed place, has been included in the Commonwealth Heritage List; and

(b) if the assessed place:

(i) was nominated; or

(ii) was included in a place that was nominated; or

(iii) includes a place that was nominated;

by a person in response to a notice under subsection 341H(1)—advise the person that the assessed place, or the listed part of the assessed place, has been included in the Commonwealth Heritage List; and

(c) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and

(d) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.

(7) Paragraph (6)(a) does not apply unless the assessed place is within the Australian jurisdiction.

(8) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (6)(a)(i), the Minister may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

(a) advertisements in a newspaper, or newspapers, circulating in the area in which the assessed place is located;

(b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the assessed place;

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(c) displays in public buildings at or near the assessed place.

Additional requirements if Minister decides not to include place

(9) If the Minister decides not to include the assessed place in the Commonwealth Heritage List, the Minister must, within 10 business days after making the decision:
(a) publish the decision on the internet; and
(b) if the assessed place:
(i) was nominated; or
(ii) was included in a place that was nominated; or
(iii) includes a place that was nominated;
by a person in response to a notice under subsection 341H(1)—advise the person of the decision, and of the reasons for the decision.

Note: Subsection (9) applies in a case where the Minister decides that none of the assessed place is to be included in the Commonwealth Heritage List.

Subdivision BB—Inclusion of places in the Commonwealth Heritage List: emergency process

341JJ Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the emergency process for the inclusion of places in the Commonwealth Heritage List.

The emergency process involves the following steps:
(a) the Minister may include a place in the Commonwealth Heritage List if it is under threat (see section 341JK);
(b) the Minister asks the Australian Heritage Council to assess the place (see section 341JL);
(c) the Australian Heritage Council publishes notice of the listing and invites comments (see section 341JM);

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(d) the Australian Heritage Council assesses the place, and gives the assessment to the Minister (see sections 341JN and 341JO);

(e) the Minister has 12 months from the listing of the place to decide whether it should continue to be listed, and the listing will lapse if the Minister does not make a decision within that period (see section 341JP).

341JK Minister may include place in Commonwealth Heritage List if under threat

(1) If the Minister believes:

(a) a place has or may have one or more Commonwealth Heritage values; and

(b) any of those values is under threat of a significant adverse impact; and

(c) that threat is both likely and imminent;

the Minister may, by instrument published in the *Gazette*, include in the Commonwealth Heritage List the place and the Commonwealth Heritage values the Minister believes the place has or may have.

Note: For which places can be included in the Commonwealth Heritage List, see subsection 341C(2).

(2) If:

(a) the place is included in the Commonwealth Heritage List under subsection (1); and

(b) before that inclusion of the place, the place was being considered for inclusion in the List under the process set out in Subdivision BA;

that process ceases to apply to the place when it is included in the List under subsection (1).

Note: Subsection (2) does not prevent the process in Subdivision BA again starting to apply to the place if (for example) the place ceases to be listed because of subsection 341JP(1) or (4) and a person subsequently nominates the place under that Subdivision.

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(3) If the place is included in the Commonwealth Heritage List under subsection (1), the Minister must:

(a) in any case—within 10 business days after the inclusion of the place, publish a copy of the instrument under subsection (1):

(i) on the internet; and

(ii) in accordance with any other requirements specified in the regulations; and

(b) if the place is within the Australian jurisdiction—take all practicable steps to:

(i) identify each person who is an owner or occupier of all or part of the place; and

(ii) advise each person identified that the place has been included in the Commonwealth Heritage List.

(4) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (3)(b)(i), the Minister may satisfy the requirements of paragraph (3)(b) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

(a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;

(b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place;

(c) displays in public buildings at or near the place.

341JL Minister to ask Australian Heritage Council for assessment

(1) If the Minister includes a place in the Commonwealth Heritage List under section 341JK, the Minister must, in writing, request the Australian Heritage Council to give the Minister an assessment of whether the place meets any of the Commonwealth Heritage criteria.

(2) The request must specify the assessment completion time for the assessment.

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Note: When specifying an assessment completion time, the 12-month period referred to in subsection 341JP(1) should be considered.

341JM Publication of listing of place and inviting comments

(1) If the Australian Heritage Council receives a request under subsection 341JL(1) in relation to a place that has been included in the Commonwealth Heritage List, the Council must publish a notice inviting people to comment on the listing of the place.

(2) A notice under subsection (1) in relation to a place:
  (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
  (b) must contain the following:
    (i) a description of the place;
    (ii) a statement that the place has been included in the Commonwealth Heritage List, and that specifies the Commonwealth Heritage values that have been included in the List in relation to the place;
    (iii) the date on which the place was so included; and
  (c) must invite people to make comments, to the Australian Heritage Council, about:
    (i) whether the place meets any of the Commonwealth Heritage criteria; and
    (ii) whether the place should continue to be included in the Commonwealth Heritage List; and
  (d) must specify the date (the ***cut-off date***) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
  (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (3)(b), apply to making comments.

(3) The regulations may provide for either or both of the following:
  (a) how a notice under subsection (1) is to be published;
  (b) the manner and form for making comments.

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341JN Australian Heritage Council to assess place and give assessment to Minister

(1) Section 341JG applies in relation to a request under subsection 341JL(1) as if:

(a) a reference in section 341JG to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and

(b) a reference in section 341JG to the notice under subsection 341JF(1) in relation to the place were a reference to the notice under subsection 341JM(1) in relation to the place; and

(c) a reference in section 341JG to regulations referred to in paragraph 341JF(4)(b) were a reference to regulations referred to in paragraph 341JM(3)(b); and

(d) a reference in section 341JG to whether the place should be included in the Commonwealth Heritage List were a reference to whether the place should continue to be included in the Commonwealth Heritage List.

(2) A reference in another provision of this Act to section 341JG, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

341JO Time by which assessments to be provided to Minister

(1) Section 341JH applies in relation to a request under subsection 341JL(1) as if:

(a) a reference in section 341JH to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and

(b) a reference in section 341JH to the assessment completion time specified in the list for the place were a reference to the assessment completion time specified in the request.

(2) A reference in another provision of this Act to section 341JH, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

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341JP Decision about place remaining in the Commonwealth Heritage List

Minister to decide whether place should remain listed

(1) Within 12 months after the inclusion of a place in the Commonwealth Heritage List under section 341JK, the Minister must, by instrument published in the *Gazette*, subject to subsections (2) and (3):

(a) do one of the following:

(i) state that the place remains in the Commonwealth Heritage List with its boundary unaltered;

(ii) alter the boundary of the place described in the Commonwealth Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);

(iii) remove from the Commonwealth Heritage List the place and its Commonwealth Heritage values; and

(b) if the place is not removed from the Commonwealth Heritage List under subparagraph (a)(iii)—do all or any of the following:

(i) state that specified Commonwealth Heritage values included in the List under section 341JK for the place remain in the List for the place;

(ii) include in the List for the place specified Commonwealth Heritage values of the place that were not included in the List under section 341JK for the place;

(iii) remove from the List for the place specified Commonwealth Heritage values that were included in the List under section 341JK for the place.

(2) The Minister must not take action under subsection (1) unless the Minister has received an assessment from the Australian Heritage Council under section 341JG in relation to the place.

(3) The Minister must not take action under subsection (1) that results in the place remaining in the Commonwealth Heritage List

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(whether or not with the same or a different boundary) unless the Minister is satisfied that the place has one or more Commonwealth Heritage values.

Listing lapses automatically if action not taken within 12 months of listing

(4) If the Minister does not take action under subsection (1) within the period referred to in that subsection, the place, and its listed Commonwealth Heritage values, are automatically removed from the Commonwealth Heritage List, by force of this subsection, at the end of that period.

Note: This subsection applies even if the Minister is prevented from taking action under subsection (1) because of subsection (2).

Matters to be considered

(5) For the purpose of deciding what action to take under subsection (1) in relation to the place:

(a) the Minister must have regard to:

(i) the Australian Heritage Council's assessment whether the place meets any of the Commonwealth Heritage criteria; and

(ii) the comments (if any), a copy of which were given to the Minister under subsection 341JG(1) with the assessment; and

(b) the Minister may seek, and have regard to, information or advice from any source.

Disapplying section 341L

(6) Section 341L does not apply to:

(a) an alteration of the boundary of the place, under subparagraph (1)(a)(ii) of this section, that has the effect of removing part of the place from the Commonwealth Heritage List; or

(b) the removal of the place and its Commonwealth Heritage values under subparagraph (1)(a)(iii) of this section; or

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(c) the removal of a Commonwealth Heritage value of the place under subparagraph (1)(b)(iii) of this section.

Minister to publish copy or summary of subsection (1) notice

(7) The Minister must publish a copy or summary of the instrument referred to in subsection (1). The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way that the Minister considers appropriate.

Additional requirements if place etc. is removed under subsection (1)

(8) If, under subsection (1), the Minister removes from the Commonwealth Heritage List the place or a Commonwealth Heritage value of the place, or alters the boundary of the place described in the List, the Minister must, within 10 business days after the removal or alteration:

(a) in any case—publish a copy of the instrument referred to in subsection (1) on the internet; and

(b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal or alteration.

Note: For the obligation to identify owners or occupiers, see subsection 341JK(3).

Requirements if place is removed under subsection (4)

(9) If, under subsection (4), the place, and its listed Commonwealth Heritage values, are removed from the Commonwealth Heritage List, the Minister must, within 10 business days after the removal:

(a) in any case—publish notice of the removal on the internet; and

(b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal.

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Note: For the obligation to identify owners or occupiers, see subsection 341JK(3).

Alternative methods of notifying owners and occupiers

(10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Council may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

(a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;

(b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place;

(c) displays in public buildings at or near the place.

Subdivision BC—Other provisions relating to the Commonwealth Heritage List

341JQ Co-ordination with Scientific Committee—Council undertaking assessment

(1) This section applies if:

(a) the Australian Heritage Council undertakes an assessment of a place under Subdivision BA or Subdivision BB; and

(b) before giving the assessment to the Minister, the Council becomes aware that:

(i) the Scientific Committee is undertaking, or has undertaken, an assessment under Division 1 of Part 13; and

(ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).

(2) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.

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(3) Before the Australian Heritage Council gives an assessment of the place to the Minister under Subdivision BA or Subdivision BB, the Council must comply with subsection (4) or (6).

(4) If the Scientific Committee has not yet given the Minister an assessment that deals with that matter, the Australian Heritage Council must:

(a) give the Scientific Committee a copy of the assessment of the place that the Council proposes to give to the Minister; and

(b) invite the Scientific Committee to give the Council its comments in relation to that matter; and

(c) take into account, in finalising the assessment of the place that the Council gives the Minister, any comments that the Scientific Committee makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.

(5) If the Australian Heritage Council gives the Scientific Committee a copy of a proposed assessment of a place under paragraph (4)(a), the Council must also give the Scientific Committee a copy of the assessment of that place that the Council gives the Minister.

(6) If:

(a) the Scientific Committee has already given the Minister an assessment that deals with that matter; and

(b) the Australian Heritage Council has been given a copy of that assessment;

the Australian Heritage Council must take that assessment into account in finalising the assessment of the place that the Council gives the Minister.

(7) If, under section 194S or 194T, the Scientific Committee gives the Australian Heritage Council a proposed assessment, or an assessment, that deals with a particular matter because the Council is undertaking an assessment that deals with that matter, a member of the Council may discuss that matter with a member of the Scientific Committee.

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(8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 341R.

341JR Co-ordination with Scientific Committee—Council given assessment to Minister

(1) This section applies if:
  (a) the Australian Heritage Council has given to the Minister an assessment of a place under Subdivision BA or Subdivision BB; and
  (b) the Council is aware that:
    (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and
    (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).

(2) The Australian Heritage Council must, within 7 days after becoming aware as referred to in paragraph (1)(b):
  (a) ensure the Scientific Committee is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
  (b) give the Scientific Committee a copy of the assessment.

(3) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.

(4) Subsections (2) and (3) have effect despite section 341R.

341K Listing process not affected by changing boundaries of a place

(1) This section is about compliance with a provision of Subdivision BA or BB that requires or permits an act to be done in relation to the place identified by express or implied reference to an earlier provision of that Subdivision.

(2) It is sufficient compliance with the provision if the act is done in relation to a place whose boundary overlaps the boundary of the place identified by reference to the earlier provision.

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(3) This section does not affect the validity of the act so far as that depends on something other than the act being done in relation to the place.

341L Removal of places or Commonwealth Heritage values from the Commonwealth Heritage List

(1) The Minister must remove all or part of a place from the Commonwealth Heritage List as soon as practicable after the Minister becomes aware that:
  (a) the place or part is no longer in a Commonwealth area; or
  (b) the place or part is no longer owned or leased by the Commonwealth or a Commonwealth agency, if the place or part is outside the Australian jurisdiction.

(2) The Minister may remove all or part of a place from the Commonwealth Heritage List only if the Minister is satisfied that:
  (a) ignoring subsection 341D(2), the place no longer has any Commonwealth Heritage values or the part no longer contributes to any of the Commonwealth Heritage values of the place; or
  (b) it is necessary in the interests of Australia's defence or security to do so.

Note: A place or part of a place may also be removed from the Commonwealth Heritage List under subsection 341JP(1).

(3) The Minister may remove one or more Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place only if the Minister is satisfied that:
  (a) ignoring subsection 341D(2), the place no longer has the Commonwealth Heritage value or values; or
  (b) it is necessary in the interests of Australia's defence or security to do so.

(4) The Minister may remove all or part of a place, or a Commonwealth Heritage value of a place, only by an instrument including a statement of the reasons for the removal.

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Note 1: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341M).

Note 2: For requirements relating to the instrument under the *Legislation Act 2003*, see subsections (6) and (7) of this section.

(5) The instrument must deal with only one of the following kinds of removal:

(a) removal (***removal for loss of value***) of a place, part or Commonwealth Heritage value because of paragraph (2)(a) or (3)(a);

(b) removal of a place, part or Commonwealth Heritage value because of subsection (1) or paragraph (2)(b) or (3)(b).

If the instrument purports to deal with both kinds, it has no effect so far as it deals with a removal for loss of value.

(6) If the instrument deals only with removal for loss of value:

(a) it is a legislative instrument; and

(b) it takes effect on the first day it is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.

(7) If subsection (6) does not apply to the instrument, it is a notifiable instrument.

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunsetting under that Act.

341M Minister must consider advice of the Australian Heritage Council and public comments

(1) Before the Minister removes from the Commonwealth Heritage List under section 341L all or part of a place or one or more of a place's Commonwealth Heritage values in a removal for loss of value, the Minister must:

(a) give the Chair of the Australian Heritage Council a written request for the Council to give the Minister advice on the proposed removal; and

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(b) publish, on the internet, in a daily newspaper circulating in each State and self-governing Territory and in each other way required by the regulations (if any), a notice:

(i) describing the proposed removal; and

(ii) inviting anyone to give the Minister comments, within 20 business days, on the proposed removal.

The Minister must publish the notice within 20 business days of giving the request.

(2) The Australian Heritage Council must give the advice to the Minister within the period specified by the Minister.

(3) The Minister must consider the advice, if he or she receives it by the end of that period, and the comments (if any) received in accordance with the notice.

(4) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the Commonwealth Heritage values of the place concerned.

(5) The Minister must:

(a) decide whether to remove from the Commonwealth Heritage List the place or part concerned, or the Commonwealth Heritage value or values of the place concerned; and

(b) if the Minister decides to remove the place or part, or the Commonwealth Heritage value or values of the place—ensure that an instrument removing the place, part or Commonwealth Heritage value or values is made under subsection 341L(4);

within 60 business days after the earlier of the advice being received by the Minister and the specified period for giving advice to the Minister ending.

(6) However, the time limit in subsection (5) does not apply if the place is wholly or partly outside the Australian jurisdiction.

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341N Specifying one or more additional Commonwealth Heritage values for a Commonwealth Heritage place

(1) The regulations may make provision for, or in relation to, the specification in the Commonwealth Heritage List of additional Commonwealth Heritage values in relation to Commonwealth Heritage places.

(2) Without limiting the generality of subsection (1), regulations may make provision as mentioned in that subsection by specifying modifications of provisions of this Act. However, regulations must not:

(a) increase, or have the effect of increasing, the maximum penalty for any offence; or

(b) widen, or have the effect of widening, the scope of any offence.

341P Commonwealth Heritage List must be publicly available

The Minister must ensure that:

(a) up-to-date copies of the Commonwealth Heritage List are available for free to the public on request; and

(b) an up-to-date copy of the Commonwealth Heritage List is available on the internet.

Note: The copies of the Commonwealth Heritage List made publicly available may not contain certain information kept confidential under section 341Q.

341Q Certain information may be kept confidential

(1) This section applies if the Minister considers that the heritage values of a place could be significantly damaged by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:

(a) the place's precise location;

(b) the place's heritage values;

(c) any other information about the place.

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(2) It is sufficient compliance with this Act if only a general description of the place, its location or its Commonwealth Heritage values is included in:

(a) the Commonwealth Heritage List as made publicly available; or

(b) an instrument or other document created for the purposes of this Act.

341R Disclosure of Australian Heritage Council's assessments and advice

(1) A member of the Australian Heritage Council has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council:

(a) an assessment under section 341JG whether a place meets any of the Commonwealth Heritage criteria, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;

(b) advice under section 341M concerning a place or any information relating to the advice.

(2) However:

(a) the duty not to disclose a thing described in paragraph (1)(a) in relation to a place does not exist after:

(i) publication in the *Gazette* of an instrument under paragraph 341JI(1)(a) or subsection 341JP(1) in relation to the place; or

(ii) the Minister decides under paragraph 341JI(1)(b) not to include the place in the Commonwealth Heritage List; and

(b) the duty not to disclose a thing described in paragraph (1)(b) in relation to a place does not exist after:

(i) registration under the *Legislation Act 2003* of an instrument under section 341L relating to the place; or

(ii) the Minister decides under section 341M not to remove the place or a part of the place, or one or more of the

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place's Commonwealth Heritage values, from the Commonwealth Heritage List.

(2A) This section does not prevent the Australian Heritage Council from informing a person, or having discussions with a person, about the consequences that result or may result from:

(a) a place being, or not being, included in the Commonwealth Heritage List; or

(b) Commonwealth Heritage values of a place being, or not being, included in the List; or

(c) a place or part of a place, or one or more Commonwealth Heritage values of a place, being removed from the List.

(2B) Subsection (1) does not apply to a disclosure of particular information if:

(a) the Chair of the Australian Heritage Council requests the Minister to give permission to disclose that information to a particular person (or persons within a particular group of persons); and

(b) the Minister gives that permission; and

(c) the disclosure is made to that person (or a person within that group).

(3) After a member of the Australian Heritage Council has ceased under subsection (2) to have a duty not to disclose:

(a) an assessment under section 341JG whether a place meets the Commonwealth Heritage criteria; or

(b) advice under section 341M concerning a place;

the member must give a copy of the assessment or advice to anyone who asks for it.

(4) If:

(a) a member of the Australian Heritage Council proposes to give a person under subsection (3) a copy of an assessment or advice relating to a place; and

(b) the member is aware that, under section 341Q, it would be sufficient compliance with this Act if the copy included only

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a general description of the place, its location or its Commonwealth Heritage values;

the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

Subdivision C—Management plans for Commonwealth Heritage places

341S Management plans for Commonwealth Heritage places

(1) A Commonwealth agency must make a written plan to protect and manage the Commonwealth Heritage values of a Commonwealth Heritage place it owns or controls. The agency must do so within the period mentioned either:

(a) at the time the agency starts owning or controlling the place, in the agency's heritage strategy under section 341ZA; or

(b) after that time, in the agency's first such strategy.

Note: However, a Commonwealth agency must not make plans for managing certain places (see section 341U).

(2) The Commonwealth agency may, in writing, amend the plan or revoke and replace the plan.

(3) A Commonwealth agency must give notice, in accordance with the regulations, if the agency:

(a) makes a plan for a Commonwealth Heritage place; or

(b) amends such a plan; or

(c) revokes and replaces such a plan.

Note: Subdivision E imposes other obligations on Commonwealth agencies.

(4) A plan must:

(a) address the matters prescribed by the regulations; and

(b) not be inconsistent with the Commonwealth Heritage management principles (see Subdivision D).

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(5) If the Commonwealth Heritage management principles change so that a plan (the ***earlier plan***) is inconsistent with them, the agency concerned must as soon as practicable make a written instrument:

(a) amending the earlier plan to make it consistent with the principles; or

(b) revoking and replacing the earlier plan.

(6) Before making, amending or revoking and replacing a plan, the agency concerned must:

(a) ask the Minister for advice on the proposed plan or amendment and must take account of any such advice received from the Minister; and

(b) seek in accordance with the regulations, and consider, comments from anyone about the matters to be addressed by the proposed plan or amendment.

(7) The Minister must consult with the Australian Heritage Council in preparing an advice for the purposes of this section.

(8) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument.

341T Endorsing management plans for Commonwealth Heritage places

(1) A Commonwealth agency that makes a plan for managing a Commonwealth Heritage place may ask the Minister to endorse the plan. If the Commonwealth agency does so, it must give the Minister a copy of the plan.

(1A) The Minister must decide within 60 business days of being given the copy of the plan whether or not to endorse the plan.

(1B) Within 10 business days of making the decision, the Minister must inform the Commonwealth agency in writing of the decision and publish on the internet a notice of the decision.

(2) The Minister:

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(a) may only endorse a plan that the Minister is satisfied provides for the conservation of the Commonwealth Heritage values of the place concerned; and

(b) must not endorse a plan that the Minister considers is inconsistent with the Commonwealth Heritage management principles (see Subdivision D).

(3) The Minister may, at any time, revoke an endorsement of a plan if the Minister considers it appropriate to do so.

341U Restriction on ability to make plans

Despite section 341S, a Commonwealth agency must not make a plan for managing so much of a Commonwealth Heritage place as is in a Commonwealth reserve and covered by another plan under this Act.

341V Compliance with plans by the Commonwealth and Commonwealth agencies

(1) The Commonwealth or a Commonwealth agency must not:

(a) contravene a plan made under section 341S; or

(b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.

(2) If there is no plan in force under section 341S for a particular Commonwealth Heritage place, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the place are not inconsistent with the Commonwealth Heritage management principles.

341W Multiple plans in the same document

To avoid doubt, a plan for managing a Commonwealth Heritage place may be in the same document as:

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(a) one or more other plans for managing Commonwealth Heritage places; or

(b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

341X Review of plans at least every 5 years

(1) At least once in every 5 year period after a plan for managing a Commonwealth Heritage place is made under section 341S, the Commonwealth agency concerned must cause a review of the plan to be carried out.

(2) The review must:

(a) assess whether the plan is consistent with the Commonwealth Heritage management principles in force at the time; and

(b) assess whether the plan is effective in protecting and conserving the Commonwealth Heritage values of the place; and

(c) make recommendations for the improved protection of the Commonwealth Heritage values of the place.

(3) The person carrying out the review must publish, on the internet and in a daily newspaper circulating in each State and self-governing Territory, a notice inviting anyone to give the person comments within 20 business days on:

(a) whether the plan is consistent with the Commonwealth Heritage management principles; and

(b) the effectiveness of the plan in protecting and conserving the Commonwealth Heritage values of the place.

(4) In carrying out the review, the person must consider the comments (if any) received in accordance with the notice.

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Subdivision D—The Commonwealth Heritage management principles

341Y Commonwealth Heritage management principles

(1) The regulations must prescribe principles for managing Commonwealth Heritage places. The principles prescribed are the ***Commonwealth Heritage management principles***.

(2) The regulations may prescribe obligations to implement or give effect to the Commonwealth Heritage management principles.

(3) A person must comply with the regulations to the extent that they impose obligations on the person.

Subdivision E—Obligations of Commonwealth agencies

341Z Obligation to assist the Minister and the Australian Heritage Council

A Commonwealth agency that owns or controls a place that has, or might have, one or more Commonwealth Heritage values must take all reasonable steps to assist the Minister and the Australian Heritage Council in the identification, assessment and monitoring of the place's Commonwealth Heritage values.

341ZA Heritage strategies

(1) If a Commonwealth agency owns or controls one or more places, the agency must:

(a) prepare a written heritage strategy for managing the places to protect and conserve their Commonwealth Heritage values; and

(b) give a copy of the strategy to the Minister;

as soon as practicable and in any event within 2 years after the later of:

(c) the time the agency first owns or controls a place; and

(d) the commencement of this section.

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Note: The heritage strategy will apply to every place the agency owns or controls.

(1A) Before making a heritage strategy, the Commonwealth agency must consult the Australian Heritage Council and take into account any advice the agency receives from the Council.

(2) The Commonwealth agency may, in writing, amend the heritage strategy or revoke and replace the heritage strategy. The Commonwealth agency must give the Minister a copy of the amended or replacement strategy within 20 business days of the amendment or replacement.

(3) A heritage strategy must:
(a) mention the period within which the Commonwealth agency must make a plan under section 341S; and
(b) mention the period within which the Commonwealth agency must do the things mentioned in subsection 341ZB(1); and
(c) address the matters prescribed by the regulations (if any); and
(d) not be inconsistent with the Commonwealth Heritage management principles.

(4) The Minister must advise the Commonwealth agency whether or not the agency's heritage strategy (whether original, amended or replacement) is inconsistent with the Commonwealth Heritage management principles.

(5) At least once in every 3 year period after a heritage strategy is made, the Commonwealth agency concerned must cause a review of the strategy to be carried out.

(6) The agency must give the Minister a written report of the review. The report must address the matters prescribed by the regulations (if any).

341ZB Heritage assessments and registers

(1) A Commonwealth agency must do all of the following within the period mentioned in its heritage strategy:

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(a) conduct a program to identify Commonwealth Heritage values for each place it owns or controls;
(b) produce a register that sets out, for each place it owns or controls, the Commonwealth Heritage values (if any) of that place;
(c) give the Minister a written report that includes:
(i) details of the program; and
(ii) a copy of the register.

(2) The regulations may prescribe all or any of the following:
(a) how Commonwealth heritage values may be identified for a place;
(b) matters a register must address;
(c) matters a report to the Minister must address.

(3) A Commonwealth agency must keep its register up to date.

(4) A register may be kept electronically.

(5) If a report under paragraph (1)(c) indicates that a place owned or controlled by a Commonwealth agency may have one or more Commonwealth Heritage values, information from the report may be used or referred to in a nomination of the place for inclusion in the Commonwealth Heritage List.

341ZC Minimising adverse impact on heritage values

A Commonwealth agency must not take an action that has, will have or is likely to have an adverse impact on the National Heritage values of a National Heritage place or the Commonwealth Heritage values of a Commonwealth Heritage place, unless:
(a) there is no feasible and prudent alternative to taking the action; and
(b) all measures that can reasonably be taken to mitigate the impact of the action on those values are taken.

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341ZE Protecting Commonwealth Heritage values of places sold or leased

(1) This section applies if a Commonwealth agency executes a contract for the sale or lease to someone else of a Commonwealth area in the Australian jurisdiction that is or includes all or part of a Commonwealth Heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.

(1A) The Commonwealth agency must give the Minister at least 40 business days' notice before executing the contract.

(2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the Commonwealth Heritage values of the place, unless the agency is satisfied that:

(a) having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable; or

(b) including such a covenant in the contract is impracticable.

(3) The Commonwealth agency must inform the Minister before executing the contract if:

(a) such a covenant:

(i) would not, or could not be made to, bind the successors in title of the buyer or lessee; or

(ii) could be insufficient to ensure the ongoing protection of the Commonwealth Heritage values of the place; or

(b) the agency is satisfied as described in subsection (2).

The information must include written reasons why paragraph (a) applies or why the agency is satisfied as described in subsection (2).

(4) If the Minister is informed of a matter in paragraph (3)(a) or that the Commonwealth agency is satisfied that it is unreasonable or impracticable to include such a covenant in the contract, the Minister must:

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(a) take all reasonable measures to enter into a conservation agreement with the prospective buyer or lessee for the protection and conservation of the Commonwealth Heritage values of the place; or

(b) advise the agency about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place.

(5) If the Minister is informed that the Commonwealth agency is satisfied that it is unnecessary to include such a covenant in the contract, the Minister may advise the agency about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place.

(6) If the Minister advises the Commonwealth agency under this section about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place, the agency must take all reasonable steps to ensure that the measures are taken.

Subdivision G—Assistance for protecting Commonwealth Heritage places

341ZG Commonwealth assistance for protecting Commonwealth Heritage places

(1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a Commonwealth Heritage place to any person.

(2) The Commonwealth may give the assistance subject to conditions.

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Subdivision H—Reviewing and reporting on the Commonwealth Heritage List

341ZH Reviewing and reporting on the Commonwealth Heritage List

(1) At least once in every 5 year period after the Commonwealth Heritage List is established, the Minister must ensure that:

(a) a review of the Commonwealth Heritage List is carried out; and

(b) a report of that review is tabled in each House of the Parliament.

(2) The report must include details of:

(a) the number of places included in the Commonwealth Heritage List; and

(b) any significant damage or threat to the Commonwealth Heritage values of those places; and

(c) how many plans under Subdivision C for managing Commonwealth Heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and

(d) the operation of any conservation agreements under Part 14 that affect Commonwealth Heritage places; and

(e) all nominations, assessments and changes to the Commonwealth Heritage List under this Division during the period of review; and

(f) compliance with this Act in relation to Commonwealth Heritage places; and

(g) any other matters that the Minister considers relevant.

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Division 4—Commonwealth reserves

Subdivision A—Simplified outline of this Division

342 Simplified outline of this Division

The following is a simplified outline of this Division:

Commonwealth reserves can be declared over areas of land or sea:

(a) that the Commonwealth owns or leases; or

(b) that are in a Commonwealth marine area; or

(c) outside Australia that the Commonwealth has international obligations to protect.

A Proclamation must assign the reserve to a particular category, that affects how the reserve is managed and used.

Some activities can be undertaken in a reserve only if a management plan provides for them. Commonwealth agencies must comply with a management plan. Regulations can be made to control a wide range of activities in reserves.

The Minister may approve a management plan prepared by the Director and any Board for a reserve.

In agreement with indigenous people, the Minister can set up a Board for a reserve including land leased from indigenous people.

Subdivision B—Declaring and revoking Commonwealth reserves

343 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

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The Governor-General can proclaim Commonwealth reserves over areas of land or sea:

(a) that the Commonwealth owns; or
(b) that the Commonwealth or the Director leases; or
(c) that are in a Commonwealth marine area; or
(d) outside Australia that the Commonwealth has international obligations to protect.

A Proclamation must assign the reserve to a particular category that affects how the reserve is managed and used.

Proclamations can be made to alter and revoke reserves.

The Director must consult publicly before some Proclamations are made.

344 Declaring Commonwealth reserves

Declaring a Commonwealth reserve

(1) The Governor-General may, by Proclamation, declare as a Commonwealth reserve:
  (a) an area of land:
    (i) that is owned by the Commonwealth in a Territory; or
    (ii) that is owned by the Commonwealth outside a Territory; or
    (iii) that is held under lease by the Commonwealth or the Director in a Territory; or
    (iv) that is held under lease by the Commonwealth or the Director outside a Territory; or
    (v) outside Australia and in respect of which Australia has obligations relating to biodiversity or heritage under an agreement with one or more other countries that may appropriately be met by declaring the area a Commonwealth reserve; or

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(b) an area of sea:
(i) in a Commonwealth marine area; or
(ii) outside Australia and in respect of which Australia has obligations relating to biodiversity or heritage under an agreement with one or more other countries that may appropriately be met by declaring the area a Commonwealth reserve; or

(c) an area of land described in paragraph (a) and sea described in paragraph (b).

Note 1: Section 351 sets out some prerequisites for making Proclamations.

Note 2: A reference to Australia generally includes its coastal sea. See section 15B of the *Acts Interpretation Act 1901*.

Limits on acquiring land for reservation

(2) If land:
(a) is in:
(i) a State or self-governing Territory (except the Northern Territory); or
(ii) the Northern Territory outside both Uluṟu-Kata Tjuṯa National Park and the Alligator Rivers Region (as defined by the *Environment Protection (Alligator Rivers Region) Act 1978*); and

(b) is dedicated or reserved under a law of the State or Territory for purposes related to nature conservation or the protection of areas of historical, archaeological or geological importance or of areas having special significance in relation to indigenous persons;

the Commonwealth must not acquire the land for the purposes of declaring it a Commonwealth reserve, without the consent of the State or Territory.

Uluṟu-Kata Tjuṯa National Park

(3) ***Uluṟu-Kata Tjuṯa National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Uluṟu-Kata Tjuṯa

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National Park was given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

345 Extent of Commonwealth reserve

(1) A Commonwealth reserve includes:
  (a) land or seabed to the depth stated in the Proclamation declaring the Commonwealth reserve; and
  (b) the waters and seabed under any sea in the area declared as a Commonwealth reserve.

(2) In this Act:

land includes subsoil of land and any body of water (whether flowing or not) except the sea.

seabed includes:
  (a) the surface of a coral formation; and
  (b) subsoil of seabed (including coral beneath the surface of a coral formation).

345A Commonwealth usage rights vest in Director

(1) When a Commonwealth reserve is declared, a usage right that relates to land or seabed in the reserve and is held by the Commonwealth vests in the Director, by force of this subsection.

(2A) However, subsection (2) does not apply to:
  (a) a usage right acquired by the Commonwealth in relation to the Jabiru town land (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); or
  (b) a usage right acquired by the Commonwealth that is prescribed by the regulations for the purposes of this paragraph.

(2) If the Commonwealth acquires a usage right relating to land or seabed in a Commonwealth reserve, the usage right vests in the Director.

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(3) This section does not vest in the Director a usage right in respect of minerals, despite subsections (1) and (2).

346 Content of Proclamation declaring Commonwealth reserve

Content of Proclamation

(1) The Proclamation declaring an area to be a Commonwealth reserve must:
  (a) give a name to the reserve; and
  (b) state the purposes for which the reserve is declared; and
  (c) state the depth of any land included in the reserve; and
  (d) state the depth of the seabed that is under any sea included in the reserve; and
  (e) assign the reserve to a category (an ***IUCN category***) prescribed in regulations made for the purposes of this subsection.

Assigning different zones of a reserve to different IUCN categories

(2) A Proclamation may also divide a reserve into zones and assign each zone to an IUCN category.

Assigning leasehold land to IUCN categories

(3) Before the Governor-General makes a Proclamation assigning a Commonwealth reserve or zone including land or seabed held by the Commonwealth or the Director under lease to a particular IUCN category, the Minister must be satisfied that the category to which it is proposed to assign the reserve or zone is consistent with the terms of the lease.

347 Assigning Commonwealth reserves and zones to IUCN categories

Before the Governor-General makes a Proclamation assigning a Commonwealth reserve, or a zone within a Commonwealth

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reserve, to a particular IUCN category, the Minister must be satisfied:

(a) that the reserve or zone:

(i) has the characteristics (if any) prescribed by the regulations for the category; and

(ii) meets the criteria (if any) prescribed by the regulations for the category; and

(b) that the reserve or zone should be managed in accordance with the Australian IUCN reserve management principles for the category.

348 Australian IUCN reserve management principles

(1) The regulations must prescribe principles for each IUCN category. The principles prescribed for an IUCN category are the ***Australian IUCN reserve management principles*** for the category.

(2) The principles prescribed for an IUCN category must identify the purpose or purposes for which a Commonwealth reserve, or zone of a Commonwealth reserve, assigned to the category is primarily to be managed.

350 Revocation and alteration of Commonwealth reserves

(1) The Governor-General may revoke or amend a Proclamation under this Subdivision by another Proclamation.

Note: Section 351 sets out some prerequisites for making Proclamations.

(2) Before the Governor-General makes a Proclamation that results in land, sea or seabed ceasing to be included in a Commonwealth reserve, the Minister must be satisfied:

(a) that the Proclamation, if made, would be in accordance with a resolution passed by each House of Parliament on a motion; and

(b) that notice of the motion was given at least 15 sitting days of that House before the motion was moved.

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(3) Subsection (2) does not apply to a Proclamation that results in land, sea or seabed ceasing to be included in one Commonwealth reserve or zone and being included in another Commonwealth reserve or zone.

(4) If the Director ceases to hold land or seabed in a Commonwealth reserve under lease:
  (a) the land or seabed ceases to be part of the reserve by force of this paragraph; and
  (b) the Governor-General must make a Proclamation revoking or amending the Proclamation that included the land or seabed in a Commonwealth reserve, to reflect the fact that the land or seabed is no longer part of the reserve.

(5) Subsection (4) does not apply if the Director ceases to hold the land or seabed under a lease because:
  (a) the Commonwealth becomes the owner of the land or seabed; or
  (b) the Director surrenders the lease in consideration of the grant to the Director of another lease of that land or seabed.

(6) Except as described in subsection (4), land, sea or seabed in a Commonwealth reserve does not cease to be within the reserve merely because a usage right relating to the land, sea or seabed is transferred, assigned, surrendered, extinguished or changed in any way.

(7) A ***usage right*** is an estate or a legal or equitable charge, power, privilege, authority, licence or permit.

Note: Section 2B of the *Acts Interpretation Act 1901* defines ***estate***.

351 Report before making Proclamation

Minister must consider report before Proclamation made

(1) Before the Governor-General makes a Proclamation under this Subdivision, the Minister must consider a report prepared by the Director on the matter to be dealt with by the Proclamation.

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Procedure for preparing report

(2) In preparing a report, the Director must:

(a) publish in the *Gazette* and in accordance with the regulations (if any) a notice:

(i) stating the matter to be dealt with by the Proclamation; and

(ii) inviting the public to comment on the matter to be dealt with by the Proclamation; and

(iii) specifying the address to which comments may be sent; and

(iv) specifying the day by which any comments must be sent; and

(b) consider any comments made in response to the invitation; and

(c) include in the report the comments and the Director's views on the comments.

Content of notice inviting comments

(3) A notice stating the matter to be dealt with by a Proclamation to declare a Commonwealth reserve must include a statement of:

(a) the proposed name of the reserve; and

(b) the proposed boundaries of the reserve and of any zones into which the reserve is to be divided; and

(c) the purpose for which the reserve is to be declared; and

(d) which IUCN category the reserve (and, if applicable, each zone of the reserve) is to be assigned to; and

(e) the purposes for which it is intended to manage and use the reserve.

Content of notice relating to revocation of Commonwealth reserve

(4) A notice stating the matter to be dealt with by a Proclamation to cause any land, sea or seabed to cease to be part of a Commonwealth reserve must state the boundaries of that land, sea or seabed.

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Time for comment

(5) The day specified in the notice as the day by which any comments must be sent must be at least 60 days after the last day on which the notice is published in the *Gazette* or in accordance with any regulations.

When this section does not apply

(6) Subsection (1) does not apply in relation to a Proclamation that:
  (a) declares an area in the Kakadu region to be a Commonwealth reserve; or
  (b) has the effect of changing the name of a Commonwealth reserve in the Kakadu region; or
  (c) results in land, sea or seabed ceasing to be included in one Commonwealth reserve and being included in another Commonwealth reserve without changing the IUCN category to which the land, sea or seabed is assigned.

352 What happens to Director's usage rights when Commonwealth reserve is revoked

(1) This section applies in relation to land or seabed that ceases to be included in a Commonwealth reserve because of a Proclamation made under section 350, except a Proclamation that causes the land or seabed:
  (a) to cease to be included in one Commonwealth reserve; and
  (b) to be included in another Commonwealth reserve.

(2) A usage right relating to the land or seabed that the Director held vests in the Commonwealth, by force of this subsection.

(3) However, if the usage right is a lease of indigenous people's land, the usage right ceases to exist, by force of this subsection.

(4) If the land is in a State or Territory:
  (a) the Director may give the officer of the State or Territory responsible for registering land titles a copy of the Proclamation, certified by the Director; and

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(b) the officer may make an entry in his or her registers and do anything else needed to reflect the effect of this section.

Subdivision C—Activities in Commonwealth reserves

353 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

> Many works cannot be carried out in a Commonwealth reserve unless permitted by a management plan.
>
> If there is not a management plan in force for a reserve, it must be managed in a way appropriate for the category it has been assigned to by a Proclamation or an earlier management plan.
>
> Regulations can be made to control activities in reserves.
>
> People who have rights relating to an area that is later included in a reserve can continue to exercise those rights in the reserve.

354 Activities that may be carried on only under management plan

(1) A person must not do one of the following acts in a Commonwealth reserve except in accordance with a management plan in operation for the reserve:

(a) kill, injure, take, trade, keep or move a member of a native species; or

(b) damage heritage; or

(c) carry on an excavation; or

(d) erect a building or other structure; or

(e) carry out works; or

(f) take an action for commercial purposes.

Civil penalty:

(a) for an individual—500 penalty units;

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(b) for a body corporate—5,000 penalty units.

(1A) Subsection (1) does not apply to an action taken in the course of carrying on mining operations.

Note: Mining operations are covered by sections 355, 355A and 387.

(2) However, if a management plan is not in operation for a Commonwealth reserve, the Director may do an act described in subsection (1) for:

(a) preserving or protecting the reserve; or

(b) protecting or conserving biodiversity or heritage in the reserve; or

(c) controlling authorised scientific research; or

(d) protecting persons or property in the reserve; or

(e) managing the effects of actions taken under a usage right described in section 359.

(3) Subsection (2) does not apply in relation to so much of a Commonwealth reserve as is in the Kakadu region, the Uluru region or the Jervis Bay Territory.

Note: Section 385 sets out what the Director may do in a Commonwealth reserve in the Kakadu region, Uluru region or Jervis Bay Territory when there is not a management plan in operation for the reserve.

(3A) Subsection (1) does not apply to an action that is covered by an approval in force under subsection 359B(1). For this purpose, an action is covered by such an approval if:

(a) a management plan is not in operation for the Commonwealth reserve; and

(b) the action is, or is in the class of actions, specified in the approval; and

(c) the action is taken in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

(4) This section has effect despite any other law of the Commonwealth, a State or a Territory, but:

(a) subsections (1) and (2) are subject to:

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(i) section 359 (about interests and rights existing before a Commonwealth reserve); and

(ii) section 359A (about traditional use of an area in a reserve); and

(iii) the *Antarctic Treaty (Environment Protection) Act 1980*; and

(b) subsection (1) is also subject to section 385 (about activities in Commonwealth reserves in the Kakadu region, Uluru region or Jervis Bay Territory without management plans).

354A Offences relating to activities that may only be carried on under management plan

Causing death etc to native species or damage to heritage

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken in a Commonwealth reserve; and

(c) the action:

(i) results in the death, injury, taking, trade, keeping or moving of a member of a native species in the reserve; or

(ii) results in damage to heritage in the reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(2) Strict liability applies:

(a) to paragraph (1)(b); and

(b) to the physical element of circumstance in paragraph (1)(c), that the member of the native species or the heritage is in the reserve.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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Erection of buildings etc.

(3) A person commits an offence if:
  (a) the person takes any of the following actions:
    (i) erecting a building or structure;
    (ii) carrying on an excavation;
    (iii) carrying out works; and
  (b) the action is taken in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(4) Strict liability applies to paragraph (3)(b).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Actions taken for commercial purposes

(5) A person commits an offence if:
  (a) the person takes an action; and
  (b) the person takes the action for a commercial purpose; and
  (c) the action is taken in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(6) Paragraph (5)(b) states the fault element for paragraph (5)(a).

(7) Strict liability applies to paragraph (5)(c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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Exception for actions in accordance with a management plan

(8) Subsections (1), (3) and (5) do not apply to an action if the action is in accordance with a management plan in operation for the Commonwealth reserve in which the action is taken.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Note 2: This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

Exception for mining operations

(9) Subsections (1), (3) and (5) do not apply to an action if the action is taken in the course of carrying on mining operations.

Note 1: Mining operations are covered by sections 355, 355A and 387.

Note 2: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception for certain actions taken by the Director—actions in places other than Kakadu, Uluru or Jervis Bay

(10) Subsections (1), (3) and (5) do not apply to an action taken by the Director if:

(a) a management plan is not in operation for the Commonwealth reserve in which the action is taken; and

(b) the action is not taken in the Kakadu region, the Uluru region or the Jervis Bay Territory; and

(c) the Director takes the action for the purpose of:

(i) preserving or protecting the reserve; or

(ii) protecting or conserving biodiversity or heritage in the reserve; or

(iii) controlling authorised scientific research; or

(iv) protecting persons or property in the reserve; or

(v) managing the effects of actions taken under a usage right described in section 359.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

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Note 2: This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

Exception for certain actions taken by the Director—conduct in Kakadu, Uluru or Jervis Bay

(11) Subsections (1), (3) and (5) do not apply to an action taken by the Director in accordance with section 385.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception for prior usage rights

(12) Subsections (1), (3) and (5) do not apply to an action that is covered by a usage right, or a right arising out of a usage right, to which section 359 applies.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Note 2: This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

Exception for prior traditional use

(13) Subsections (1), (3) and (5) do not apply to an action that is covered by section 359A.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception for actions approved under section 359B

(14) Subsections (1), (3) and (5) do not apply to an action that is covered by an approval in force under subsection 359B(1). For this purpose, an action is covered by such an approval if:

(a) a management plan is not in operation for the Commonwealth reserve; and

(b) the action is, or is in the class of actions, specified in the approval; and

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(c) the action is taken in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Actions in the Antarctic

(15) Subsections (1), (3) and (5) do not apply to an action taken in the Antarctic if:

(a) taking the action is an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980*; and

(b) the person has a defence under that Act in relation to the offence.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

(16) The exceptions in subsections (8), (10) and (12) of this section do not apply in relation to an action taken in the Antarctic if taking the action is an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980*.

Note: Although the exception in subsection (9) can still apply, mining operations in the Antarctic are prohibited in any case under the *Antarctic Treaty (Environment Protection) Act 1980*. The exceptions in subsections (11) and (13) cannot apply to actions taken in the Antarctic.

Sentencing restriction for offences in the exclusive economic zone

(17) A court must not impose a sentence of imprisonment on a person for an offence under subsection (1) or (5) if:

(a) fishing (as defined in the *Fisheries Management Act 1991*) constituted a physical element of the offence; and

(b) the fishing was done:

(i) in the exclusive economic zone; and

(ii) otherwise than from an Australian vessel (or a vessel declared to be an Australian boat under subsection 4(2) of the *Fisheries Management Act 1991*); and

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(c) at the time of the fishing, the person was not an Australian citizen or a person who held a permanent visa under the *Migration Act 1958* and was domiciled in Australia or an external territory.

Section has effect despite other laws

(18) Except as provided in this section, this section has effect despite any other law of the Commonwealth or of a State or Territory.

355 Limits on mining operations in Commonwealth reserves

(1) A person must not carry on mining operations in a Commonwealth reserve except in accordance with a management plan in operation for the reserve.

Civil penalty:

(a) for an individual—500 penalty units;

(b) for a body corporate—5,000 penalty units.

(1A) Subsection (1) does not apply in relation to the Kakadu National Park or the Antarctic.

Note: Section 387 generally prohibits mining operations in the Kakadu National Park. Sections 19A and 19B of the *Antarctic Treaty (Environment Protection) Act 1980* prohibit mining activities in the Antarctic.

(2) The following are ***mining operations***:

(a) operations or activities connected with, or incidental to, the mining or recovery of minerals or the production of material from minerals, including:

(i) prospecting and exploration for minerals; and

(ii) milling, refining, treatment and processing of minerals; and

(iii) storage and disposal of minerals and materials produced from minerals;

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(b) the construction and use of towns, camps, dams, pipelines power lines or other structures for the purposes of operations or activities described in paragraph (a);

(c) the performance of any other work for the purposes of operations or activities described in paragraph (a).

(3) A ***mineral*** is a naturally occurring substance or mixture of substances.

(3A) Subsection (1) does not apply to mining operations that are covered by an approval in force under subsection 359B(2). For this purpose, mining operations are covered by such an approval if:

(a) a management plan is not in operation for the Commonwealth reserve; and

(b) the mining operations are, or are in the class of mining operations, specified in the approval; and

(c) the mining operations are carried on in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

(4) Subsection (1) does not prevent the doing of anything for the purposes of building or construction, or the supply of water, in a Commonwealth reserve unless the purposes are connected with, or incidental to, mining operations.

(5) This section is subject to:

(a) section 359 (about interests and rights existing before a Commonwealth reserve); and

(b) section 359A (about traditional use of an area in a reserve);

but has effect despite any other law of the Commonwealth, a State or a Territory.

355A Offence relating to mining operations

Offence of carrying on mining operations

(1) A person commits an offence if:

(a) the person carries on mining operations; and

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(b) the mining operations are carried on in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(2) Strict liability applies to paragraph (1)(b).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) To avoid doubt, subsection (1) does not prevent the doing of anything for the purposes of building or construction, or the supply of water, in a Commonwealth reserve unless the purposes are connected with, or incidental to, mining operations.

Exception for mining operations carried on in accordance with a management plan

(4) Subsection (1) does not apply to the carrying on of mining operations in accordance with a management plan in operation for the Commonwealth reserve in which the operations are carried on.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception in relation to Kakadu National Park and the Antarctic

(5) Subsection (1) does not apply to the carrying on of mining operations in the Kakadu National Park or in the Antarctic.

Note 1: Section 387 generally prohibits mining operations in the Kakadu National Park. Sections 19A and 19B of the *Antarctic Treaty (Environment Protection) Act 1980* prohibit mining activities in the Antarctic.

Note 2: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

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Exception for prior usage rights

(6) Subsection (1) does not apply to mining operations that are covered by a usage right, or a right arising out of a usage right, to which section 359 applies.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception for prior traditional use

(7) Subsection (1) does not apply to an action that is covered by section 359A.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception for mining operations approved under section 359B

(8) Subsection (1) does not apply to mining operations that are covered by an approval in force under subsection 359B(2). For this purpose, mining operations are covered by such an approval if:

(a) a management plan is not in operation for the Commonwealth reserve; and

(b) the mining operations are, or are in the class of mining operations, specified in the approval; and

(c) the mining operations are carried on in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Section has effect despite other laws

(9) Except as provided in this section, this section has effect despite any other law of the Commonwealth or of a State or Territory.

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356 Regulations controlling activities relating to Commonwealth reserves

(1) The regulations may:

(a) regulate or prohibit the pollution of soil, air or water in a manner that is, or is likely to be, harmful to:

(i) people, biodiversity or heritage in Commonwealth reserves; or

(ii) the natural features of Commonwealth reserves; and

(b) regulate or prohibit tourism in Commonwealth reserves; and

(c) provide for the protection and preservation of Commonwealth reserves and property and things in Commonwealth reserves; and

(d) provide for the protection and conservation of biodiversity in Commonwealth reserves; and

(e) regulate or prohibit access to all or part of a Commonwealth reserve by persons or classes of persons; and

(f) provide for the removal of trespassers from Commonwealth reserves; and

(g) regulate or prohibit camping in Commonwealth reserves; and

(h) provide for the safety of persons in Commonwealth reserves; and

(i) regulate or prohibit the use of fire in Commonwealth reserves; and

(j) regulate the conduct, or prohibit certain kinds of conduct, of persons in Commonwealth reserves; and

(k) regulate or prohibit the carrying on of any trade or commerce in a Commonwealth reserve; and

(l) regulate or prohibit the use of vehicles in Commonwealth reserves and provide for signs and road markings for those purposes; and

(m) provide for:

(i) the removal of vehicles, aircraft or vessels from places in Commonwealth reserves where they have been left in contravention of the regulations or have been abandoned; and

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(ii) the impounding of such vehicles, aircraft or vessels; and

(n) provide that the person taken for the purposes of the regulations to be the owner of a motor vehicle involved in a contravention of a provision of the regulations relating to the parking or stopping of vehicles in a Commonwealth reserve is, except as provided otherwise, taken to commit an offence against the provision; and

(o) provide for a person to be taken to be the owner of a motor vehicle for the purposes of regulations made under paragraph (n) (including a person in whose name the motor vehicle is registered under the law of a State or Territory); and

(p) regulate or prohibit the use of vessels in, and the passage of vessels through, Commonwealth reserves; and

(q) regulate or prohibit the landing and use of aircraft in, and the flying of aircraft over, Commonwealth reserves; and

(r) provide for the giving of effect to management plans for Commonwealth reserves; and

(s) regulate or prohibit the taking of animals or plants into or out of Commonwealth reserves; and

(t) provide for the impounding, removal, destruction or disposal of animals found straying in Commonwealth reserves; and

(u) regulate or prohibit the taking into Commonwealth reserves, and the use in Commonwealth reserves, of weapons, traps, nets, snares, fishing apparatus and other devices; and

(v) regulate or prohibit the laying of baits and the use of explosives and poisons in Commonwealth reserves; and

(w) provide for the collection of specimens and the pursuit of research in Commonwealth reserves for scientific purposes; and

(x) provide for the issue of licences, permits and authorities relating to activities in Commonwealth reserves, the conditions subject to which they are issued and the charging of fees by the Commonwealth in respect of such licences, permits and authorities; and

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(y) provide for any matter incidental to or connected with a matter described in another paragraph.

(2) A provision of the regulations regulating or prohibiting the flying of aircraft over a Commonwealth reserve does not have any effect so far as it is inconsistent with a law of the Commonwealth. For this purpose, a provision is not inconsistent with such a law if it can be complied with without contravention of the law.

(3) A law of a Territory has effect so far as it is not inconsistent with a provision of the regulations having effect in that Territory. For this purpose, such a law is not inconsistent with the provision so far as it can operate concurrently with the provision.

356A Charges for activities in Commonwealth reserves

Subject to the approval of the Minister, the Director may determine and impose charges for:

(a) entering or using a Commonwealth reserve or part of a Commonwealth reserve; and

(b) using services or facilities provided by the Director in or in connection with a Commonwealth reserve; and

(c) the parking or stopping of vehicles in a Commonwealth reserve; and

(d) the mooring or landing of vessels in a Commonwealth reserve; and

(e) the landing of aircraft in a Commonwealth reserve; and

(f) the use of vehicles and vessels in a Commonwealth reserve.

357 Managing Commonwealth reserves while a management plan is not in operation

(1) While a management plan is not in operation for a Commonwealth reserve, the Director must exercise the Director's powers and perform the Director's functions in relation to the reserve or to a zone of the reserve so as to manage the reserve in accordance with:

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(a) the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone has most recently been assigned by:
(i) a Proclamation made under Subdivision B; or
(ii) a management plan that was in operation for the reserve (but is no longer); and
(b) if the Director holds land or seabed included in the reserve under lease—the Director's obligations under the lease.

(2) While a management plan is not in operation for a Commonwealth reserve, the Commonwealth or a Commonwealth agency must not exercise its powers or perform its functions in relation to the reserve or a zone of the reserve inconsistently with either or both of the following:
(a) the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone has most recently been assigned by:
(i) a Proclamation made under Subdivision B; or
(ii) a management plan that was in operation for the reserve (but is no longer);
(b) if the Director holds land or seabed included in the reserve under lease—the Director's obligations under the lease.

(3) If:
(a) a zone of a Commonwealth reserve is assigned to an IUCN category at or after the time the reserve was most recently assigned to an IUCN category; and
(b) the IUCN category for the zone is different from the IUCN category for the reserve;
disregard the IUCN category to which the reserve has been assigned for the purposes of the application of this section in relation to the zone.

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358 Restriction on disposal of Director's interests in Commonwealth reserves

(1) The Director must not sell or otherwise dispose of a usage right the Director holds in relation to land, sea or seabed in a Commonwealth reserve.

(2) However, the Director may grant a lease or sub-lease of, or a licence relating to, land or seabed in a Commonwealth reserve, but only in accordance with a management plan in operation for the reserve.

(3) Despite subsection (1), the Director may surrender a lease of land or seabed within a Commonwealth reserve in consideration of the grant to the Director of a new lease of land or seabed that includes that land or seabed.

(4) The *Lands Acquisition Act 1989* does not apply to the grant or surrender of a lease or sub-lease under this section.

(5) This section has effect despite any law of the Commonwealth or of a State or Territory.

359 Prior usage rights relating to Commonwealth reserves continue to have effect

(1) None of the following provisions affect a usage right that was held by a person (other than the Commonwealth or the Director) in relation to land or seabed immediately before the land or seabed was included in a Commonwealth reserve:

(a) provisions of this Division that relate to the reserve (whether or not they also relate to another Commonwealth reserve);

(b) provisions of the regulations made for the purposes of this Division that relate to the reserve (whether or not they also relate to another Commonwealth reserve);

(c) provisions of a management plan for the reserve.

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(2) None of the provisions described in subsection (1) affect the application of a law of a State or Territory in relation to the usage right.

(3) The usage right may be renewed or have its term extended only:
   (a) with the Minister's written consent; and
   (b) subject to any conditions determined by the Minister.

This subsection has effect despite subsections (1) and (2) and any other law of the Commonwealth, a State or a Territory.

(4) Subsections (1) and (2) apply in relation to a usage right relating to minerals on, in or under land or seabed included in a Commonwealth reserve as if the usage right were a usage right relating to the land or seabed.

(5) This section applies to a right arising out of a usage right in the same way as it applies to the usage right.

(6) This section does not apply in relation to:
   (a) a usage right relating to minerals in Kakadu National Park; or
   (b) a usage right so far as it relates to mining operations for those minerals.

359A Traditional use of Commonwealth reserves by indigenous persons

(1) This Division and regulations made for the purposes of this Division do not prevent an indigenous person from continuing in accordance with law the traditional use of an area in a Commonwealth reserve for:
   (a) hunting or food-gathering (except for purposes of sale); or
   (b) ceremonial and religious purposes.

(2) However, regulations made for the purposes of this Division do affect an indigenous person's traditional use of an area in a Commonwealth reserve if they:
   (a) are made for the purpose of conserving biodiversity in the area; and

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(b) expressly affect the traditional use of the area by indigenous persons.

359B Director's approval of actions and mining operations when a management plan is not in operation

Approval of actions (other than mining operations)

(1) The Director may, in writing, approve the taking of a specified action or a specified class of actions, by a specified person or a specified class of persons, in a specified area that is or is part of a Commonwealth reserve, if:

(a) the Director is satisfied that:

(i) no management plan has yet come into operation for the reserve; and

(ii) immediately before the area became included in the reserve, the person, or the persons in the class of persons, held a usage right, or a right arising out of a usage right, that entitled the person or persons to take the action, or the actions in the class of actions, in the area; and

(iii) the usage right is not a right in relation to land or seabed to which section 359 applies; or

(b) the Director is satisfied that:

(i) a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation; and

(ii) immediately before the management plan ceased to be in operation, the person, or the persons in the class of persons, were taking the action, or the actions in the class of actions, in the area without contravening section 354 or 354A; and

(iii) the action or class of actions is not mining operations.

Note 1: In exercising the power to give approvals, the Director must comply with section 357.

Note 2: If an action taken without approval would not contravene section 354 or 354A, the action does not need approval under this subsection.

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Approval of mining operations

(2) The Director may, in writing, approve the carrying on of specified mining operations, or a specified class of mining operations, by a specified person or a specified class of persons, in a specified area that is or is part of a Commonwealth reserve, if:

(a) the Director is satisfied that no management plan has yet come into operation for the reserve; or

(b) the Director is satisfied that a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation.

Note 1: In exercising the power to give approvals, the Director must comply with section 357.

Note 2: If an action taken without approval would not contravene section 355 or 355A, the action does not need approval under this subsection.

Limits on approvals in relation to the Kakadu National Park and the Antarctic

(3) The Director must not approve:

(a) an action in the Antarctic that would be an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980* (whether or not a defence would be available under that Act); or

(b) mining operations in the Kakadu National Park or the Antarctic.

Approvals may be subject to conditions

(4) An approval given under subsection (1) or (2) may be expressed to be subject to specified conditions.

When approvals come into force

(5) An approval given under subsection (1) or (2) comes into force on the day the Director gives the approval, or on a later day specified in the approval.

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Variation and revocation of approvals

(6) The Director may, in writing, vary or revoke an approval:
  (a) under subsection (1)—if the Director considers that the action, or an action in the class of actions, to which the approval relates is not being taken in accordance with the approval; or
  (b) under subsection (2)—if the Director considers that the mining operations, or mining operations in the class of mining operations, to which the approval relates are not being carried on in accordance with the approval.

(7) An approval given under subsection (1) or (2), or a variation or revocation of an approval, is not a legislative instrument.

Subdivision D—Complying with management plans for Commonwealth reserves

361 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

> The Director must manage a Commonwealth reserve to give effect to a management plan for the reserve. If indigenous people think the Director is not doing this for a reserve including their land, they can take the matter up with the Minister.
>
> Commonwealth agencies must act so as not to contravene a management plan.

362 Commonwealth and Commonwealth agencies to comply with management plan for Commonwealth reserve

(1) The Director must exercise the Director's powers and perform the Director's functions to give effect to a management plan that is in operation for a Commonwealth reserve.

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(2) The Commonwealth or a Commonwealth agency must not perform its functions or exercise its powers in relation to a Commonwealth reserve inconsistently with a management plan that is in operation for the reserve.

(3) To avoid doubt, if a management plan for a Commonwealth reserve prohibits the exercise of a specified power, or the performance of a specified function, under an Act (including a power or function under an instrument made under an Act), the power or function must not be exercised in or in relation to the reserve while the plan is in operation.

363 Resolving disagreement between land council and Director over implementation of plan

Minister to resolve disagreement

(1) If the Chair or Chairperson of a land council for indigenous people's land in a jointly managed reserve and the Director disagree about whether the Director is exercising the Director's powers and performing the Director's functions consistently with a management plan in operation for the reserve:
   (a) the Director must inform the Minister; and
   (b) the Minister must appoint a person the Minister considers to be suitably qualified and in a position to deal with the matter impartially to inquire into the matter; and
   (c) the person appointed must inquire into the matter and give the Minister a report and recommendations; and
   (d) the Minister must give the Director any directions the Minister thinks fit; and
   (e) the Director must comply with any direction.

*What is a **land council**?*

(2) The ***land council*** for indigenous people's land in a Commonwealth reserve is:

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(a) if the land is in the area of an Aboriginal Land Council established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976*—that Aboriginal Land Council; and

(b) if the land is in Jervis Bay Territory—the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land and Waters (Jervis Bay Territory) Act 1986*; and

(c) if the land is elsewhere—a body corporate that:

(i) is established by or under an Act; and

(ii) has functions relating to the indigenous people's land in the reserve; and

(iii) consists of indigenous persons who either live in an area to which one or more of the body's functions relate or are registered as traditional owners of indigenous people's land in an area to which one or more of the body's functions relate.

*What is **indigenous people's land**?*

(3) Land is ***indigenous people's land*** if:

(a) a body corporate holds an estate that allows the body to lease the land to the Commonwealth or the Director; and

(b) the body corporate was established by or under an Act for the purpose of holding for the benefit of indigenous persons title to land vested in it by or under that Act.

*Who is an **indigenous person**?*

(4) A person is an ***indigenous person*** if he or she is:

(a) a member of the Aboriginal race of Australia; or

(b) a descendant of an indigenous inhabitant of the Torres Strait Islands.

*What is a **jointly managed reserve**?*

(5) A Commonwealth reserve is a ***jointly managed reserve*** if:

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(a) it includes indigenous people's land held under lease by the Director; and
(b) a Board is established for the reserve under Subdivision F.

364 Resolving disagreement between Director and Board over implementation of plan

(1) The Director must inform the Minister if the Director believes that:
(a) a decision of a Board for a Commonwealth reserve is likely to be substantially detrimental to the good management of the reserve; or
(b) a decision of a Board for a Commonwealth reserve is contrary to a management plan in operation for the reserve.

(2) The Minister must take the steps he or she thinks fit to resolve the matter.

(3) If the Minister cannot resolve the matter, the Minister must appoint as an arbitrator to inquire into the matter a person whom the Minister thinks is suitably qualified and in a position to deal with the matter impartially.

(4) The person appointed must inquire into the matter and give the Minister a report and recommendations.

(5) After the Minister receives the report and recommendations, he or she must give the Director and the Board:
(a) the directions the Minister thinks appropriate; and
(b) a statement of reasons for giving the directions; and
(c) a copy of the report and recommendations.

(6) The Director and the Board must comply with any directions given by the Minister.

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Subdivision E—Approving management plans for Commonwealth reserves

365 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

> The Minister may approve a management plan for a Commonwealth reserve prepared by the Director and any Board for the reserve. Before the Minister approves a plan, he or she may modify it.
>
> Before the Director gives a plan to the Minister for approval, there are 2 opportunities for the public and others with an interest in the reserve to comment.
>
> The Minister can resolve any disagreements between the Director and a Board for a reserve over preparation of a plan for the reserve.

366 Obligation to prepare management plans for Commonwealth reserves

Plans required for Commonwealth reserves without Boards

(1) The Director must prepare management plans for each Commonwealth reserve for which there is not a Board to try to ensure that a management plan for the reserve is in operation:
  (a) as soon as practicable after the reserve is declared; and
  (b) at all times after the first plan for managing the reserve takes effect.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

Amending or replacing plans for reserves without Boards

(2) The Director may prepare a management plan for a Commonwealth reserve for which there is not a Board:

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(a) to amend a management plan that is in operation for the reserve; or

(b) to revoke and replace a management plan that is in operation for the reserve.

Plans required for Commonwealth reserves with Boards

(3) A Board for a Commonwealth reserve must prepare management plans for the reserve in conjunction with the Director, to try to ensure that a management plan for the reserve is in operation:

(a) as soon as practicable after the Board is established; and

(b) at all times after a plan for managing the reserve first takes effect after the establishment of the Board.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

Amending or replacing plans for reserves with Boards

(4) The Board for a Commonwealth reserve may prepare a management plan for the reserve in conjunction with the Director:

(a) to amend a management plan that is in operation for the reserve; or

(b) to revoke and replace a management plan that is in operation for the reserve.

367 Content of a management plan for a Commonwealth reserve

Mandatory content

(1) A management plan for a Commonwealth reserve must provide for the protection and conservation of the reserve. In particular, the plan must:

(a) assign the reserve to an IUCN category (whether or not a Proclamation has assigned the reserve or a zone of the reserve to that IUCN category); and

(b) state how the reserve, or each zone of the reserve, is to be managed; and

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(c) state how the natural features of the reserve, or of each zone of the reserve, are to be protected and conserved; and

(d) if the Director holds land or seabed included in the reserve under lease—be consistent with the Director's obligations under the lease; and

(e) specify any limitation or prohibition on the exercise of a power, or performance of a function, under an Act in or in relation to the reserve; and

(f) specify any mining operation, major excavation or other work that may be carried on in the reserve, and the conditions under which it may be carried on; and

(g) specify any other operation or activity that may be carried on in the reserve; and

(h) indicate generally the activities that are to be prohibited or regulated in the reserve, and the means of prohibiting or regulating them; and

(i) indicate how the plan takes account of Australia's obligations under each agreement with one or more other countries that is relevant to the reserve (including the World Heritage Convention and the Ramsar Convention, if appropriate); and

(j) if the reserve includes a National Heritage place:

(i) not be inconsistent with the National Heritage management principles; and

(ii) address the matters prescribed by regulations made for the purposes of paragraph 324S(4)(a); and

(k) if the reserve includes a Commonwealth Heritage place:

(i) not be inconsistent with the Commonwealth Heritage management principles; and

(ii) address the matters prescribed by regulations made for the purposes of paragraph 341S(4)(a).

Plan may assign different zones to different IUCN categories

(2) A management plan for a Commonwealth reserve may divide the reserve into zones and assign each zone to an IUCN category (whether or not a Proclamation has assigned the reserve or each

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zone of the reserve to that IUCN category). The category to which a zone is assigned may differ from the category to which the reserve is assigned.

Consistency with Australian IUCN reserve management principles

(3) The provisions of a management plan for a Commonwealth reserve that relate to the reserve or a particular zone of the reserve must not be inconsistent with the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone is assigned by the plan.

If zone is in different category from reserve

(4) If the management plan for a Commonwealth reserve assigns the reserve to one IUCN category and assigns a zone of the reserve to a different IUCN category, disregard the IUCN category to which the reserve is assigned for the purposes of the application of subsection (3) in relation to the zone.

(5) A single management plan may be the management plan for more than one Commonwealth reserve.

Plans for proposed extension of reserve

(6) A management plan for a Commonwealth reserve may include provisions relating to an area that is proposed to be included in the reserve, but they do not have effect until the area is included in the reserve.

368 Steps in preparing management plans for Commonwealth reserves

Overview of process

(1) Before the Director gives the Minister a management plan for a Commonwealth reserve for approval:

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(a) the Director must publish under subsection (2) an invitation to comment on the proposal to prepare a draft of the plan; and

(b) the Director and the Board (if any) for the reserve must prepare a draft of the plan, taking into account any comments received in response to the invitation; and

(c) the Director must publish under subsection (5) an invitation to comment on the draft; and

(d) the Director must make publicly available copies of the draft free or for a reasonable fee determined by the Director; and

(e) the Director and the Board (if any) must consider any comments received in response to the invitation to comment on the draft and may alter the draft.

Notice inviting comments on proposal to prepare draft

(2) The Director must publish a notice in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any):

(a) stating that the Director proposes to prepare a draft of a management plan for the Commonwealth reserve; and

(b) inviting comments on the proposal from:

(i) members of the public; and

(ii) the Chair or Chairperson of any land council for indigenous people's land in the reserve; and

(iii) if the reserve is in a State or self-governing Territory—the agency (if any) of the State or Territory that is responsible for managing national parks established in the State or Territory under a law of the State or Territory; and

(iv) if the Minister has established under Division 4 of Part 19 an advisory committee with functions relating to the reserve—the committee; and

(v) if the Director holds any land or seabed in the reserve under lease—anyone the Director is obliged under the lease to consult about management of the land or seabed; and

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(c) specifying the address to which comments may be sent; and

(d) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.

Considerations in preparing a management plan

(3) In preparing a management plan for a Commonwealth reserve, the Director and the Board (if any) for the reserve must take account of:

(a) any report considered by the Minister under section 351 before a Proclamation declaring the reserve was made; and

(b) the regulation of the use of the reserve for the purpose for which it was declared; and

(c) the interests of:

(i) any owner of any land or seabed in the reserve; and

(ii) the traditional owners of any indigenous people's land in the reserve; and

(iii) any other indigenous persons interested in the reserve; and

(iv) any person who has a usage right relating to land, sea or seabed in the reserve that existed (or is derived from a usage right that existed) immediately before the reserve was declared; and

(d) the protection of the special features of the reserve, including objects and sites of biological, historical, palaeontological, archaeological, geological and geographical interest; and

(e) the protection, conservation and management of biodiversity and heritage within the reserve; and

(f) the protection of the reserve against damage; and

(g) Australia's obligations under agreements between Australia and one or more other countries relevant to the protection and conservation of biodiversity and heritage.

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*Who are the **traditional owners** of indigenous people's land?*

(4) The ***traditional owners*** of indigenous people's land are:

(a) a local descent group of indigenous persons who:

(i) have common spiritual affiliations to a site on the land under a primary spiritual responsibility for that site and for the land; and

(ii) are entitled by indigenous tradition to forage as of right over the land; or

(b) if the land is in the Jervis Bay Territory—the members of the Wreck Bay Aboriginal Community Council.

Notice inviting comment on draft

(5) The Director must publish a notice in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any):

(a) stating that the Director has prepared a draft of a management plan for the Commonwealth reserve; and

(b) stating how the draft can be obtained; and

(c) inviting comments on the draft from:

(i) members of the public; and

(ii) the Chair or Chairperson of any land council for any indigenous people's land in the reserve; and

(iii) if the reserve is in a State or self-governing Territory—the agency (if any) of the State or Territory that is responsible for managing national parks established in the State or Territory under a law of the State or Territory; and

(iv) if the Minister has established under Division 4 of Part 19 an advisory committee with functions relating to the reserve—the committee; and

(v) if the Director holds any land or seabed in the reserve under lease—anyone the Director is obliged under the lease to consult about management of the land or seabed; and

(d) specifying the address to which comments may be sent; and

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(e) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.

369 Resolving disagreements between Director and Board in planning process

(1) The Director and the Board for a Commonwealth reserve must inform the Minister if they cannot agree on:
   (a) the content of a management plan they are preparing for the reserve; or
   (b) any changes to be made following comment made in response to an invitation to comment on a draft management plan for the reserve; or
   (c) whether the Director should give a management plan for the reserve to the Minister for approval (either initially or after the Minister has given the plan back to the Director with suggestions under paragraph 370(3)(b)).

(2) If the Minister is advised by the Director and a Board of a disagreement, the Minister must take the steps the Minister thinks fit to resolve the disagreement.

(3) If the Minister cannot resolve the disagreement, the Minister must appoint as an arbitrator to inquire into the matter a person whom the Minister thinks is suitably qualified and in a position to deal with the matter impartially.

(4) The appointed arbitrator must inquire into the matter and give the Minister a report and recommendations.

(5) After the Minister receives the report and recommendations, he or she must give the Director and the Board:
   (a) the directions the Minister thinks appropriate; and
   (b) a statement of reasons for giving the directions; and
   (c) a copy of the report and recommendations.

(6) The Director and the Board must comply with any directions given by the Minister.

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370 Approval of management plans for Commonwealth reserves

Giving management plan to Minister for approval

(1) The Director must give the Minister a management plan for a Commonwealth reserve for approval, but only if the Board (if any) for the reserve agrees. The Director must do so as soon as practicable after considering under paragraph 368(1)(e) the comments (if any) on a draft of the management plan.

Things to be given to Minister with management plan

(2) When the Director gives the plan to the Minister, the Director must also give the Minister:
  (a) any comments received in response to the invitation to comment on a draft of the plan; and
  (b) the views of the Director and any Board for the reserve on the comments.

Minister's decision

(3) Within 60 days of the Director giving the plan, the Minister:
  (a) must consider the plan and any comments and views given to the Minister under subsection (2); and
  (b) must either:
    (i) approve the plan; or
    (ii) give the plan back to the Director with suggestions for consideration by the Director and any Board for the reserve.

Note: There are some extra rules about giving back to the Director a management plan for a Commonwealth reserve in the Kakadu region, the Uluru region or Jervis Bay Territory. See section 390.

Procedure if Minister gives plan back

(4) If the Minister gives the plan back to the Director with suggestions:
  (a) the Director and any Board for the Commonwealth reserve to which the plan relates must consider the suggestions; and

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(b) the Director must give the Minister an identical or altered version of the plan, but only if any Board for the reserve agrees; and

(c) the Director must give the Minister, with the plan, the Director's views on the Minister's suggestions.

Minister's decision on re-submitted plan

(5) As soon as practicable after the Director has given the Minister a version of the plan under subsection (4), the Minister:

(a) must consider it and the views given to the Minister under subsection (4); and

(b) must approve the plan with any modifications the Minister considers appropriate.

Considerations for Minister assigning reserve to IUCN category

(6) When approving a management plan for a Commonwealth reserve to assign the reserve, or a zone of a reserve, to a particular IUCN category, the Minister must be satisfied of the matters specified in section 347 that he or she would have to be satisfied of before the Governor-General could make a Proclamation to assign the reserve or zone to that IUCN category.

371 Approved management plans are legislative instruments

(1) A management plan for a Commonwealth reserve prepared by the Director, and the Board (if any) for the reserve, and approved by the Minister, is a legislative instrument made by the Minister on the day the plan is approved.

(3) When the management plan is laid before each House of the Parliament, there must also be laid before the House copies of any comments, views, report or recommendations given to the Minister under this Division in relation to the plan that have not been given effect to in the plan.

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372 Amendment and revocation of management plans for Commonwealth reserves

A management plan for a Commonwealth reserve may amend or revoke and replace an earlier management plan for the reserve.

373 Expiry of management plans for Commonwealth reserves

A management plan for a Commonwealth reserve ceases to have effect 10 years after it took effect (unless it has already been revoked).

Subdivision F—Boards for Commonwealth reserves on indigenous people's land

374 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

> The Minister must establish a Board for a Commonwealth reserve that is wholly or partly on indigenous people's land, if the land council for that land (or traditional owners) and the Minister agree that there should be a Board for the reserve.
>
> The Board's role is to make decisions and plans for management of the reserve, in conjunction with the Director.
>
> A majority of Board members must be indigenous people nominated by traditional owners if the reserve is wholly or mostly on indigenous people's land.

375 Application

This Subdivision provides for Boards for Commonwealth reserves that consist of, or include, indigenous people's land held under lease by the Director.

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376 Functions of a Board for a Commonwealth reserve

(1) The functions of a Board established for a Commonwealth reserve are:

(a) to make decisions relating to the management of the reserve that are consistent with the management plan in operation for the reserve; and

(b) in conjunction with the Director, to:

(i) prepare management plans for the reserve; and

(ii) monitor the management of the reserve; and

(iii) advise the Minister on all aspects of the future development of the reserve.

(2) When performing its functions, a Board must comply with a direction given by the Minister to the Board under:

(a) section 364 (Resolving disagreement between Director and Board over implementation of plan); or

(b) section 369 (Resolving disagreements between Director and Board in planning process).

377 Minister must establish Board if land council or traditional owners agree

(1) The Minister must establish a Board for a specified Commonwealth reserve by notice published in the *Gazette* and in the way (if any) prescribed by the regulations if he or she agrees on the matters set out in subsection (2) with:

(a) the land council for the indigenous people's land in the reserve that the Director holds under lease; or

(b) if there is not such a land council—the traditional owners of the indigenous people's land in the reserve that the Director holds under lease.

(2) The matters to be agreed on are:

(a) that a Board should be established for the reserve; and

(b) the name of the Board; and

(c) the number of positions of member of the Board; and

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(d) the qualifications for appointment to each position of member of the Board.

(3) The notice must specify each of the matters described in paragraphs (2)(b), (c) and (d).

Note: The notice may specify different qualifications for different positions. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

(4) If the reserve consists wholly or mostly of indigenous people's land held by the Director under lease, a majority of the members of the Board must be indigenous persons nominated by the traditional owners of the indigenous people's land.

(5) If the reserve is in a State or self-governing Territory, at least one member of the Board must be a person nominated by the State or Territory.

Note: By agreement between the Minister and the land council or traditional owners, more than one member of a Board may be a person nominated by the State or Territory.

378 Altering the constitution of a Board or abolishing a Board

Revoking and amending notice establishing Board

(1) The Minister may, by notice in the *Gazette*:

(a) revoke a notice under section 377 relating to the Board for the reserve; or

(b) amend a notice under section 377 relating to the Board for the reserve so as to:

(i) change the specification of the name by which the Board is to be known; or

(ii) increase the number of members of the Board and specify the qualifications for appointment to each of the extra positions of member; or

(iii) decrease the number of positions of member of the Board and specify which positions are abolished; or

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(iv) change the qualifications for appointment to a position of member of the Board.

Note: The Minister may exercise the power of amendment from time to time. See subsection 33(1) of the *Acts Interpretation Act 1901*.

Limits on changing composition of Board

(2) Paragraph (1)(b) has effect subject to subsections 377(4) and (5).

Note 1: Subsection 377(4) requires a majority of the members of the Board of a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease to be indigenous persons nominated by the traditional owners of the land.

Note 2: Subsection 377(5) requires at least one member of a Board for a reserve in a State or self-governing Territory to be a nominee of the State or Territory.

Prerequisite to revoking or amending notice

(3) The Minister may revoke or amend a notice under section 377 relating to a Commonwealth reserve only if the Minister agrees on the revocation or amendment with:

(a) the land council for indigenous people's land in the reserve, if the Board for the reserve was established with the agreement of the land council; or

(b) the traditional owners of indigenous people's land in the reserve, if the Board for the reserve was established with the agreement of the traditional owners.

Board's identity not affected by name change

(4) If the Minister amends a notice published under section 377 so as to alter a Board's name or constitution, section 25B of the *Acts Interpretation Act 1901* applies in relation to the alteration as if it had been made by an Act.

Note: This ensures that the Board's identity and functions are not affected by the alteration, and that certain references to the Board under its old name are treated as references to the Board under its new name.

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379 Appointment of Board members

Appointment of persons

(1) The Minister may, in writing, appoint a person on a part-time basis to a position of member of a Board if:

(a) the person is qualified for appointment to the position; and

(b) the Minister is satisfied that the person is a fit and proper person to be a member of the Board (see section 379A).

Note: Subsection (1) is subject to section 390A, which deals with the appointment of a Northern Territory nominee as a member of the Board for a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease in the Territory.

Replacement appointments

(2) As soon as practicable after a position of member of a Board becomes vacant, the Minister must appoint a person to the position under subsection (1).

Validity of appointments

(3) A deficiency or irregularity relating to the nomination, selection or appointment of a member of a Board does not invalidate the member's appointment.

379A Fit and proper person

In determining for the purposes of this Subdivision whether a person is a fit and proper person to be a member of a Board, the Minister may have regard to the matters specified in regulations made for the purposes of this section. The Minister may also have regard to any other matter the Minister considers appropriate.

Note: The question whether a person is a fit and proper person is relevant to subsection 379(1) (which is about appointments to Boards), and subsection 382(1A) (which is about termination of appointments).

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380 Terms and conditions

Term of office

(1) A member of a Board holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: Section 382 sets out the circumstances in which a member's appointment may be (or must be) terminated.

Avoiding doubt—future terms of office

(1A) To avoid doubt, subsection (1) does not prevent a person from being appointed as a member of a Board again. This subsection does not affect the operation of section 33AA of the *Acts Interpretation Act 1901* in relation to this Act.

Resignation

(2) A member of a Board may resign his or her appointment by giving the Minister a written resignation.

Other terms and conditions

(3) A member of a Board holds office on the terms and conditions (if any) that are determined by the Minister in relation to matters not covered by this Act or the regulations.

381 Remuneration

(1) A member of a Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.

(2) A member of a Board is to be paid the allowances that are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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382 Termination of appointments of Board members

Termination when person stops being qualified for appointment

(1) The appointment of a person to a position of member of a Board is terminated when the person ceases to be qualified for appointment to the position.

Termination if person is not fit and proper

(1A) The Minister must terminate the appointment of a member of a Board if the Minister is satisfied that the member is not a fit and proper person to be a member of the Board. For this purpose, in having regard to matters as mentioned in section 379A, the Minister may consider things that happened either before or after the member's appointment.

Termination for misbehaviour or incapacity

(2) The Minister may terminate the appointment of a member of a Board for misbehaviour or physical or mental incapacity.

Termination for failure to attend Board meetings

(3) The Minister may terminate the appointment of a member of a Board if the member is absent, except on leave of absence, from 3 consecutive meetings of the Board of which the member has had notice.

Termination for engaging in conflicting work

(4) The Minister may terminate the appointment of a member of a Board if the member engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of the member.

Termination for conduct inimical to Board

(4A) The Minister may terminate the appointment of a member of a Board for a reserve if the Minister is satisfied that the person has

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acted in a way that is not in the interest of the Board as a whole. However, the Minister may not terminate under this subsection the appointment of a member nominated by traditional owners of indigenous people's land in the reserve.

Termination for failure to disclose interests

(5) The Minister must terminate the appointment of a member of a Board if:
  (a) the member does not comply with any requirements prescribed by the regulations to disclose an interest the member has in a matter being considered or about to be considered by the Board; and
  (b) the member does not have a reasonable excuse for not complying.

Termination on request by nominator

(6) The Minister must terminate the appointment of a member of a Board if:
  (a) the member was appointed on the nomination of a particular person, body or group of persons; and
  (b) the person, body or group gives the Minister a written request to terminate the appointment.

Termination for bankruptcy or insolvency

(7) The Minister may terminate the appointment of a member of the Board if the member:
  (a) becomes bankrupt; or
  (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  (c) compounds with his or her creditors; or
  (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

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383 Procedure of a Board

(1) The regulations may provide for:

(a) matters relating to the operation of a Board, including:

(i) procedures for convening meetings of the Board; and

(ii) procedures for determining who is to preside at a meeting of the Board; and

(iii) determining who may attend a meeting of the Board; and

(iv) the constitution of a quorum for a meeting of the Board; and

(v) procedures relating to a member's interest in matters being dealt with by the Board; and

(vi) the way in which matters are to be resolved by the Board; and

(b) the appointment and rights of a deputy of a member of a Board.

(2) The regulations may allow a Board to determine a matter relating to the operation of the Board for which the regulations may provide.

(3) If there are no regulations in force, a Board may operate in the way it determines.

(4) A meeting of a Board for a Commonwealth reserve consisting wholly of indigenous people's land:

(a) must not start; and

(b) must not continue;

unless the majority of the members of the Board present are persons nominated by the traditional owners of the indigenous people's land for appointment as members.

(5) Subsection (4) has effect despite subsections (1), (2) and (3).

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Subdivision G—Special rules for some Commonwealth reserves in the Northern Territory or Jervis Bay Territory

384 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

> Special rules apply to Commonwealth reserves in the Kakadu region, Uluru region and Jervis Bay Territory, affecting the activities that can be carried on in those reserves.
>
> Special procedures apply to planning for management of reserves in the Kakadu region, Uluru region and Jervis Bay Territory. These provide for extra involvement of indigenous people in the planning process.

385 Activities in Commonwealth reserve without management plan

When a management plan is not in operation for a particular Commonwealth reserve wholly or partly in the Kakadu region, Uluru region or Jervis Bay Territory, the Director may perform the Director's functions and exercise the Director's powers in and in relation to a part of the reserve in the region, subject to any directions of the Minister.

386 What are the *Kakadu region* and the *Uluru region*?

(1) The ***Kakadu region*** is the part of the Alligator Rivers Region (as defined in the *Environment Protection (Alligator Rivers Region) Act 1978*) that excludes:

(a) the area shown as the Arnhem Land Aboriginal Reserve on the map mentioned in that definition; and

(b) the areas that are pastoral leases and are described on that map as Mount Bundey and Eva Valley.

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(2) The ***Uluru region*** is the area of land described under the heading "Uluru" in Schedule 1 to the *Aboriginal Land Rights (Northern Territory) Act 1976*.

387 No mining operations in Kakadu National Park

(1) A person must not carry out mining operations in Kakadu National Park.

(2) Subsection (1) does not prevent:

(a) the use, development or reconstruction of the township known as Jabiru; or

(b) the transportation of anything in Kakadu National Park along routes (including air routes) prescribed by the regulations for the purposes of this paragraph; or

(c) the construction and use of pipelines and power lines in Kakadu National Park along routes prescribed by the regulations for the purposes of this paragraph; or

(d) the doing of anything for the purposes of building or construction, or the supply of water, in Kakadu National Park as long as the purposes are not connected with, or incidental to, mining operations; and

(e) prescribed activities carried on in Kakadu National Park in connection with, or incidental to, mining operations carried on outside Kakadu National Park.

(3) ***Kakadu National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Kakadu National Park was given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

388 Establishment and development of townships in the Kakadu region and Uluru region

(1) A person may use or develop a township in a part of a Commonwealth reserve, but only if:

(a) the part is in the Kakadu region or the Uluru region; and

(b) the person does so in accordance with:

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(i) subsection (2); and
(ii) the management plan for the reserve; and
(iii) a town plan prepared and approved in accordance with the regulations.

(2) A person (other than the Director) may use or develop a township only on land that the person holds under lease or sub-lease from:
(a) the Commonwealth; or
(b) the Director; or
(c) the Kakadu Aboriginal Land Trust (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); or
(d) the Northern Territory; or
(e) an approved entity (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*).

389 Planning for townships

Management plan provisions

(1) The provisions of a management plan for a Commonwealth reserve that relate to a township must include provisions for and in relation to the use and development of the township.

Town plan provisions

(2) A town plan must make detailed provision in relation to the use and development of the township, including, in particular, the provision (if any) to be made for any matters that are specified for the purposes of this subsection by:
(a) the management plan for the Commonwealth reserve containing the township; or
(b) the regulations.

Town plans may adopt, apply or incorporate other instruments

(3) For the purposes of subsection (2), a town plan may apply, adopt or incorporate, with or without modification:

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(a) the provisions of any law of the Northern Territory (or a part of the Territory), as in force at a specified time or as in force from time to time; or

(b) any matter contained in any instrument or writing as in force or existing at a specified time.

Revocation and variation of town plans

(5) A town plan may be revoked or amended in the manner provided by the regulations.

Note: Town plans are to be prepared and approved in accordance with the regulations. See subparagraph 388(1)(b)(iii).

390 Special rules to protect Aboriginal interests in planning process

(1) This section sets out some extra rules about the process of preparing management plans for a Commonwealth reserve wholly or partly within the Kakadu region, the Uluru region or Jervis Bay Territory.

(2) The Minister must give a management plan for a Commonwealth reserve back to the Director with suggestions under paragraph 370(3)(b) if the Minister is satisfied that there is a substantial difference of opinion between:

(a) the Chair or Chairperson of a land council for indigenous people's land in the reserve, on the one hand; and

(b) the Director, or the Director and the Board for the reserve (if it is a jointly managed reserve), on the other hand.

(3) If the Minister gives the plan back to the Director with suggestions under paragraph 370(3)(b) (whether because of subsection (2) or not), the Minister must:

(a) give a copy of the suggestions to:

(i) the Chair or Chairperson of each land council for indigenous people's land in the reserve; and

(ii) the Parks and Wildlife Commission of the Northern Territory, if the plan is for a Commonwealth reserve wholly or partly in the Territory; and

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(b) invite each person to whom the Minister gave a copy of the suggestions to give the Director comments on the suggestions within 14 days.

(4) When considering the Minister's suggestions as required by paragraph 370(4)(a), the Director and any Board for the reserve must also consider any comments made in response to the Minister's invitation.

(5) When the Director gives the Minister an identical or altered version of the plan under paragraph 370(4)(b), the Director must also:
(a) give the Minister a copy of the comments (if any) made in response to the Minister's invitation, and the Director's views on those comments; and
(b) give the Chair or Chairperson of each land council for indigenous people's land in the reserve a copy of the version of the plan given to the Minister and of the comments and views (if any) being given to the Minister under paragraph (a).

(6) The Chair or Chairperson of a land council for indigenous people's land in the reserve may make comments to the Minister relating to the version of the plan within 14 days of receiving the copy of it.

(7) If the Minister receives comments from the Chair or Chairperson of a land council for indigenous people's land in the reserve and the Minister is satisfied that there is a substantial difference of opinion between the Chair or Chairperson and the Director over the plan:
(a) the Minister may appoint a person the Minister considers to be suitably qualified and in a position to deal with the matter impartially to inquire into the matter; and
(b) the person appointed must inquire into the matter and give the Minister a report and recommendations.

(8) The Minister:
(a) must also consider:
(i) the comments (if any) made to the Minister by the Chair or Chairperson under subsection (6); and

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(ii) the report and recommendations (if any) given to the Minister under subsection (7);

when considering under subsection 370(5) the version of the plan given to the Minister under paragraph 370(4)(b); and

(b) must not approve the plan before the end of the period described in subsection (6).

390A Appointment of Northern Territory nominee to Board

(1) This section makes special provision for the appointment of a person nominated by the Northern Territory as a member of the Board for a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease in the Territory.

(2) Despite subsection 379(1), the Minister must not appoint the person unless:

(a) the members of the Board nominated by the traditional owners of the land consent to the appointment; or

(b) the appointment has been recommended under subsection (5).

(3) The Northern Territory may inform the Minister if it believes that the members of the Board nominated by the traditional owners of the land are unreasonably withholding consent to the appointment.

(4) If the Northern Territory informs the Minister, he or she must refer the matter to the person (the ***Ombudsman***) holding the office of Commonwealth Ombudsman under the *Ombudsman Act 1976*.

(5) If the Ombudsman is satisfied that the members of the Board nominated by the traditional owners of the land are unreasonably withholding consent to the appointment, the Ombudsman must recommend to the Minister that the Minister make the appointment.

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Division 5—Conservation zones

390B Simplified outline of this Division

The following is a simplified outline of this Division:

> The Governor-General can proclaim a Commonwealth area to be a conservation zone, to protect biodiversity in the area while it is being assessed for inclusion in a Commonwealth reserve.
>
> Regulations can be made to regulate a wide range of activities in a conservation zone.
>
> People who have rights relating to an area that is later included in a conservation zone can continue to exercise those rights in the zone.
>
> A conservation zone can be revoked if the Minister is satisfied the area concerned should not be included in a Commonwealth reserve. It is revoked automatically if it is included in a Commonwealth reserve.

390C Object of this Division

The object of this Division is to provide for the protection of biodiversity, other natural features and heritage in Commonwealth areas while they are being assessed for inclusion in a Commonwealth reserve.

390D Proclamation of conservation zones

(1) The Governor-General may, by Proclamation, declare a Commonwealth area outside a Commonwealth reserve to be a conservation zone.

(2) Before the Governor-General makes a Proclamation declaring a Commonwealth area to be a conservation zone, the Minister must be satisfied that the area should be assessed to determine whether

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the biodiversity, other natural features and heritage in the area should be protected by including the area in a Commonwealth reserve.

390E Regulating activities generally

(1) The regulations may:

(a) regulate or prohibit the pollution of soil, air or water in a manner that is, or is likely to be, harmful to:

(i) people, biodiversity or heritage in conservation zones; or

(ii) the natural features of conservation zones; and

(b) regulate tourism in conservation zones; and

(c) provide for the protection and preservation of conservation zones and property and things in conservation zones; and

(d) provide for the protection and conservation of biodiversity in conservation zones; and

(e) regulate or prohibit access to all or part of a conservation zone by persons or classes of persons; and

(f) provide for the removal of trespassers from conservation zones; and

(g) regulate camping in conservation zones; and

(h) provide for the safety of persons in conservation zones; and

(i) regulate the use of fire in conservation zones; and

(j) regulate the conduct of persons in conservation zones; and

(k) regulate the carrying on of any trade or commerce in a conservation zone; and

(l) regulate the use of vehicles in conservation zones and provide for signs and road markings for those purposes; and

(m) provide for:

(i) the removal of vehicles, aircraft or vessels from places in conservation zones where they have been left in contravention of the regulations or have been abandoned; and

(ii) the impounding of such vehicles, aircraft or vessels; and

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(n) provide that the person taken for the purposes of the regulations to be the owner of a motor vehicle involved in a contravention of a provision of the regulations relating to the parking or stopping of vehicles in a conservation zone is, except as provided otherwise, taken to commit an offence against the provision; and

(o) provide for a person to be taken to be the owner of a motor vehicle for the purposes of regulations made under paragraph (n) (including a person in whose name the motor vehicle is registered under the law of a State or Territory); and

(p) regulate the use of vessels in, and the passage of vessels through, conservation zones; and

(q) regulate the landing and use of aircraft in, and the flying of aircraft over, conservation zones; and

(r) regulate or prohibit the taking of animals or plants into or out of conservation zones; and

(s) provide for the impounding, removal, destruction or disposal of animals found straying in conservation zones; and

(t) regulate or prohibit the taking into conservation zones, and the use in conservation zones, of weapons, traps, nets, snares, fishing apparatus and other devices; and

(u) regulate or prohibit the laying of baits and the use of explosives and poisons in conservation zones; and

(v) provide for the collection of specimens and the pursuit of research in conservation zones for scientific purposes; and

(w) provide for the issue of licences, permits and authorities relating to activities in conservation zones, the conditions subject to which they are issued and the charging of fees by the Commonwealth in respect of such licences, permits and authorities; and

(x) provide for any matter incidental to or connected with a matter described in another paragraph.

(2) Regulations relating to conservation zones may also:

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(a) regulate the carrying on of mining operations, fishing, pastoral or agricultural activities for commercial purposes; and

(b) regulate the construction or alteration of buildings and structures; and

(c) regulate the construction or establishment of bridges, railways, roads, tracks, port facilities and air-strips and the carrying out of any other works; and

(d) regulate the felling or taking of timber; and

(e) provide for and in relation to the powers to be exercised, and the functions and duties to be performed, in and in relation to conservation zones by wardens, by rangers and by other persons included in specified classes of persons; and

(f) provide for and in relation to the giving of securities for compliance with regulations made for the purposes of this section by persons doing, or proposing to do, anything to which those regulations relate.

(3) Regulations made for the purposes of this section have no effect to the extent that they are inconsistent with the terms and conditions of a right (however described) to explore for minerals, or to mine for or recover minerals, granted under section 124 of the *Lands Acquisition Act 1989*.

390F Charges for activities in conservation zones

Subject to the approval of the Minister, the Director may determine and impose charges for using services or facilities provided by the Director in or in connection with a conservation zone.

390G Other laws and regulations made for this Division

Regulations regulating aircraft subject to other Commonwealth laws

(1) A provision of the regulations regulating the flying of aircraft over a conservation zone does not have any effect so far as it is inconsistent with a law of the Commonwealth. For this purpose, a

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provision is not inconsistent with such a law if it can be complied with without contravention of the law.

Territory laws subject to regulations

(2) A law of a Territory has effect so far as it is not inconsistent with a provision of the regulations made for the purposes of this Division and having effect in that Territory. For this purpose, such a law is not inconsistent with the provision so far as it can operate concurrently with the provision.

390H Prior usage rights relating to conservation zones continue to have effect

(1) None of the following provisions affect a usage right that was held by a person (other than the Commonwealth) in relation to land or seabed immediately before the land or seabed was included in a conservation zone:

(a) provisions of this Division that relate to the zone (whether or not they also relate to another conservation zone);

(b) provisions of the regulations made for the purposes of this Division that relate to the zone (whether or not they also relate to another conservation zone).

(2) None of the provisions covered by subsection (1) affect the application of a law of a State or Territory in relation to the usage right.

(3) The usage right may be renewed or have its term extended only:

(a) with the Minister's written consent; and

(b) subject to any conditions determined by the Minister.

This subsection has effect despite subsections (1) and (2) and any other law of the Commonwealth, a State or a Territory.

(4) Subsections (1) and (2) apply in relation to a usage right relating to minerals on, in or under land or seabed included in a conservation zone as if the usage right were a usage right relating to the land or seabed.

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(5) This section applies to a right arising out of a usage right in the same way as it applies to the usage right.

390J Revoking and altering conservation zones

Proclamations to revoke or amend declaring Proclamation

(1) The Governor-General may, by Proclamation, revoke or amend a Proclamation made under section 390D (declaring a Commonwealth area to be a conservation zone).

Limit on making Proclamations

(2) Before the Governor-General makes a Proclamation under subsection (1) causing a Commonwealth area to cease to be within a conservation zone, the Minister must be satisfied that the area should not be included in a Commonwealth reserve.

Declaration of Commonwealth reserve revokes conservation zone

(3) A Commonwealth area ceases to be a conservation zone by force of this subsection if the area becomes or is included in a Commonwealth reserve.

Conservation zone ends if it ceases to be in Commonwealth area

(4) If land, waters, seabed or airspace in a conservation zone cease to be a Commonwealth area, the land, waters, seabed or airspace cease to be (or be in) a conservation zone by force of this subsection.

Proclamation to reflect cessation of conservation zone

(5) If land, waters, seabed or airspace cease to be a conservation zone by force of subsection (3) or (4), the Governor-General must make a Proclamation revoking or amending the Proclamation that included the land, waters, seabed or airspace in a conservation zone, to reflect the fact that the land, waters, seabed or airspace are no longer part of the conservation zone.

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Chapter 5A—The List of Overseas Places of Historic Significance to Australia

Part 15A—The List of Overseas Places of Historic Significance to Australia

390K The List of Overseas Places of Historic Significance to Australia

(1) The Minister must keep a written record of places in accordance with this Part. The record is called the ***List of Overseas Places of Historic Significance to Australia***.

(2) The List of Overseas Places of Historic Significance to Australia is not a legislative instrument.

390L Inclusion of places in the List of Overseas Places of Historic Significance to Australia

(1) The Minister may, by notice published in the *Gazette*, include a place, and a statement of its historic significance to Australia, in the List of Overseas Places of Historic Significance to Australia if, and only if:

(a) the place is outside the Australian jurisdiction; and

(b) the Minister is satisfied that the place is of outstanding historic significance to Australia.

(2) The regulations may specify matters the Minister is to have regard to in considering whether he or she is satisfied as mentioned in paragraph (1)(b).

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390M Removal of places from the List of Overseas Places of Historic Significance to Australia or variation of statement of historic significance

(1) The Minister may, by notice published in the *Gazette*, do either of the following in relation to a place that is included in the List of Overseas Places of Historic Significance to Australia:

(a) remove the place, and the statement of its historic significance to Australia, from the List;

(b) vary the statement of the place's historic significance to Australia.

(2) The regulations may specify matters the Minister is to have regard to in considering whether to take action under subsection (1).

390N Inviting comments from other Ministers before taking action

(1) Before taking action in relation to a place under section 390L or 390M, the Minister (the ***Environment Minister***) must:

(a) inform the following other Ministers of the action the Environment Minister proposes to take:

(i) the Minister for Foreign Affairs;

(ii) any other Minister whom the Environment Minister believes should be informed; and

(b) invite those other Ministers to give the Environment Minister comments on the proposed action; and

(c) take any comments from those other Ministers into account.

(2) In this section:

Minister for Foreign Affairs means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

390P Minister may ask Australian Heritage Council for advice etc.

(1) The Minister may ask the Australian Heritage Council for advice relating to action that the Minister is considering taking under section 390L or 390M in relation to a place, and may take that

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advice into account in deciding what action (if any) to take under that section in relation to the place.

(2) The Minister may also seek, and have regard to, information or advice from any other source.

390Q List of Overseas Places of Historic Significance to Australia to be publicly available

The Minister must ensure that:

(a) up-to-date copies of the List of Overseas Places of Historic Significance to Australia are available for free to the public on request; and

(b) an up-to-date copy of the List is available on the internet.

390R Disclosure of Australian Heritage Council's assessments and advice

(1) A member of the Australian Heritage Council has a duty not to disclose advice under section 390P to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council.

(2) However, the duty not to disclose the advice does not exist after the Minister has decided whether to take the action to which the advice relates.

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Chapter 5B—Declared commercial fishing activities

Part 15B—Declared commercial fishing activities

Division 1—Prohibition

390SA Civil penalty—declared commercial fishing activities

A person must not engage in a declared commercial fishing activity in a Commonwealth marine area.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Note: If a body corporate is found to have contravened this section, an executive officer of the body may be found to have contravened section 494.

390SB Offence—declared commercial fishing activities

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken in a Commonwealth marine area; and

(c) the action is a declared commercial fishing activity.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note 1: If a body corporate is found to have committed an offence against this section, an executive officer of the body may be found to have committed an offence against section 495.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(2) Strict liability applies to paragraph (1)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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Division 2—Declaring a commercial fishing activity

Subdivision A—What is a declared commercial fishing activity?

390SC What is a *declared commercial fishing activity*?

(1) A ***declared commercial fishing activity*** is a commercial fishing activity that is specified in:

(a) an interim declaration that is in force under section 390SD; or

(b) a final declaration that is in force under section 390SF.

(1A) A ***commercial fishing activity*** is a fishing activity that is engaged in for a commercial purpose, and, to avoid doubt, does not include an activity that constitutes recreational fishing (within the meaning of subsection 212(2)).

Note: Under subsection 212(2), recreational fishing includes fishing from a charter boat and fishing in a fishing competition.

(2) A ***fishing activity*** means an activity that constitutes fishing.

Subdivision B—Interim declaration

390SD Interim declaration

Making an interim declaration

(1) The Minister may, by legislative instrument, make a declaration (an ***interim declaration***) that a specified commercial fishing activity is a declared commercial fishing activity.

Note 1: For variation of an interim declaration, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For revocation of an interim declaration, see section 390SG.

(2) When making an interim declaration, the Minister may identify a commercial fishing activity by reference to all or any of the following:

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(a) a method of fishing;
(b) a type of vessel used for fishing;
(c) a method of processing, carrying or transhipping of fish that have been taken;
(d) an area of waters or of seabed.

Note: Subsection (2) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

(2A) When making an interim declaration, the Minister may only specify a commercial fishing activity that had not been engaged in before 11 September 2012 in a Commonwealth marine area.

(3) The Minister must not make an interim declaration unless the Minister and the Fisheries Minister agree that:
(a) there is uncertainty about the environmental impacts of the commercial fishing activity; and
(b) it is appropriate that the commercial fishing activity be prohibited in a Commonwealth marine area while consultation occurs under section 390SE about whether to make a final declaration in relation to the commercial fishing activity under section 390SF.

When an interim declaration is in force

(4) An interim declaration:
(a) comes into force at the end of the day on which it is registered in the Federal Register of Legislation; and
(b) remains in force until the earlier of the following times:
(i) the end of the period specified in the declaration as the period for which the declaration is in force;
(ii) if the declaration is revoked—when the revocation comes into force.

Specified period for which interim declaration is in force

(5) The Minister must specify in an interim declaration the period for which it is to be in force. The period must not be longer than 60 days.

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390SE Consultation

(1) As soon as is practicable after making an interim declaration under section 390SD declaring that a specified commercial fishing activity is a declared commercial fishing activity, the Minister must publish a notice on the Department's website in accordance with subsection (2).

(2) The notice must:
  (a) invite each declaration affected person (see subsection (3)) to make a written submission about the impact on the person's rights or interests in relation to fishing if a final declaration under section 390SF were made in relation to the commercial fishing activity; and
  (b) specify that written submissions must be lodged during the period specified in the notice; and
  (c) specify the manner in which written submissions are to be lodged.

(3) A ***declaration affected person***, in relation to a commercial fishing activity, means a person who:
  (a) holds a fishing concession or is prescribed by the regulations; and
  (b) considers that the person would be detrimentally affected by the making of a final declaration under section 390SF in relation to the commercial fishing activity.

(4) For the purposes of paragraph (2)(b), the period specified in the notice must be at least 11 business days after the day the notice is published.

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Subdivision C—Final declaration

390SF Final declaration

Making a final declaration

(1) The Minister may, by legislative instrument, make a declaration (a ***final declaration***) that a specified commercial fishing activity is a declared commercial fishing activity.

Note 1: For variation of a final declaration, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For revocation of a final declaration, see section 390SG.

(2) The Minister must not make a final declaration unless:

(a) the commercial fishing activity is the same as a commercial fishing activity that is, or was, specified in an interim declaration under section 390SD; and

(b) consultation under section 390SE has occurred in relation to the commercial fishing activity; and

(c) the Minister has considered any written submission that:

(i) was made under section 390SE by a declaration affected person; and

(ii) was lodged during the period referred to in paragraph 390SE(2)(b); and

(d) the Minister and the Fisheries Minister agree that there is uncertainty about the environmental impacts of the commercial fishing activity; and

(e) the Minister and the Fisheries Minister agree that it is appropriate that:

(i) an expert panel be established under section 390SH to conduct an assessment of the commercial fishing activity and report on the matter; and

(ii) the commercial fishing activity be prohibited in a Commonwealth marine area while the expert panel conducts the assessment.

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When a final declaration is in force

(3) A final declaration:

(a) comes into force at the end of the day on which it is registered in the Federal Register of Legislation; and

(b) remains in force until the earliest of the following times:

(i) the end of the day on which the report of the expert panel is published on the Department's website under paragraph 390SL(a);

(ii) the end of the period specified in the declaration as the period for which the declaration is in force;

(iii) if the declaration is revoked—when the revocation comes into force.

Specified period for which final declaration is in force

(4) The Minister must specify in a final declaration the period for which it is to be in force. The period must not be longer than 24 months.

Subdivision D—Revoking declarations

390SG Revoking an interim or final declaration

(1) The Minister may, by legislative instrument, revoke:

(a) an interim declaration under section 390SD; or

(b) a final declaration under section 390SF.

(2) A revocation under subsection (1) comes into force at the end of the day on which it is registered in the Federal Register of Legislation.

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Division 3—Expert panel assessment of declared commercial fishing activity

390SH Establishment of expert panel

(1) As soon as is practicable after making a final declaration under section 390SF declaring that a specified commercial fishing activity is a declared commercial fishing activity, the Minister must:

(a) appoint, in writing, one or more persons (the ***members***) as an expert panel to conduct an assessment and report to the Minister about the commercial fishing activity; and

(b) with the agreement of the Fisheries Minister, specify in writing (the ***terms of reference***):

(i) the matters relating to the commercial fishing activity that are to be the subject of the assessment and report; and

(ii) the date by which the panel must report to the Minister.

Note: The Minister may revoke an appointment: see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) The Minister may specify in the terms of reference the manner in which the expert panel is to carry out the assessment.

(3) The Minister may, in writing, vary or revoke the terms of reference with the agreement of the Fisheries Minister.

(4) The Minister must:

(a) publish a copy of the terms of reference on the Department's website as soon as is practicable after the Minister specifies or varies them; and

(b) cause a copy of the terms of reference to be laid before each House of the Parliament within 15 sitting days of that House after the day the Minister specifies or varies them.

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390SI Terms and conditions

The Minister must determine, in writing, the terms and conditions applicable to members of the expert panel, including terms and conditions relating to:

(a) term of office; and

(b) remuneration; and

(c) allowances; and

(d) disclosure of interests.

390SJ Procedure for assessment

(1) The expert panel must comply with the terms of reference in conducting the assessment.

(2) Subject to subsection (1), the expert panel may determine the procedure to be followed in its assessment.

390SK Timing of the report

The expert panel must give the Minister the report on the assessment on the date specified by the Minister in the terms of reference.

390SL Publication of the report

The Minister must:

(a) publish a copy of the report on the Department's website within 20 business days after the day the Minister receives the report; and

(b) cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day the Minister receives the report; and

(c) comply with any other publication requirements prescribed by the regulations.

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Division 4—Sunsetting of this Part

390SM Sunsetting of this Part

New declarations under this Part may not be made 12 months after the day the *Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Act 2012* commences.

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Chapter 6—Administration

Part 16—Precautionary principle and other considerations in making decisions

391 Minister must consider precautionary principle in making decisions

Taking account of precautionary principle

(1) The Minister must take account of the precautionary principle in making a decision listed in the table in subsection (3), to the extent he or she can do so consistently with the other provisions of this Act.

Precautionary principle

(2) The ***precautionary principle*** is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

Decisions in which precautionary principle must be considered

(3) The decisions are:

Decisions in which precautionary principle must be considered

Item	Section decision is made under	Nature of decision
1	75	whether an action is a controlled action
2	133	whether or not to approve the taking of an action
3	201	whether or not to grant a permit
4	216	whether or not to grant a permit

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Decisions in which precautionary principle must be considered		
Item	**Section decision is made under**	**Nature of decision**
5	238	whether or not to grant a permit
6	258	whether or not to grant a permit
6A	269AA	whether or not to have a recovery plan for a listed threatened species or a listed threatened ecological community
7	269A	about making a recovery plan or adopting a plan as a recovery plan
7A	270A	whether or not to have a threat abatement plan for a key threatening process
7B	270B	about making a threat abatement plan or adopting a plan as a threat abatement plan
8	280	about approving a variation of a plan adopted as a recovery plan or threat abatement plan
9	285	about making a wildlife conservation plan or adopting a plan as a wildlife conservation plan
10	295	about approving a variation of a plan adopted as a wildlife conservation plan
10A	303CG	whether or not to grant a permit
10AA	303DC	whether or not to amend the list of exempt native specimens
10B	303DG	whether or not to grant a permit
10C	303EC	about including an item in the list referred to in section 303EB
10D	303EN	whether or not to grant a permit
10E	303FN	about declaring an operation to be an approved wildlife trade operation
10F	303FO	about declaring a plan to be an approved wildlife trade management plan
10G	303FP	about declaring a plan to be an accredited wildlife trade management plan

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Decisions in which precautionary principle must be considered		
Item	**Section decision is made under**	**Nature of decision**
10H	303GB	whether or not to grant an exceptional circumstances permit
11	316	about making a plan for managing a property that is included in the World Heritage List and is entirely within one or more Commonwealth areas
11A	324S	about making a plan for managing a National Heritage place
12	328	about making a plan for managing a wetland that is designated for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention and is entirely within one or more Commonwealth areas
13	338	about making a plan for managing a Biosphere reserve entirely within one or more Commonwealth areas
13A	341T	about endorsing a plan for managing a Commonwealth Heritage place
14	370	about approving a management plan for a Commonwealth reserve

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Part 17—Enforcement

Division 1—Wardens, rangers and inspectors

Subdivision A—Wardens and rangers

392 Appointment of wardens and rangers

The Minister may, in writing, appoint:

(a) an officer or employee of the Department; or

(b) a person covered by an arrangement made under section 393;

to be a warden or ranger.

393 Arrangements for certain officers or employees to exercise powers etc. of wardens or rangers

(1) The Secretary may make arrangements with an Agency Head (within the meaning of the *Public Service Act 1999*), or with an authority of the Commonwealth, for the performance or exercise of all or any of the functions or powers of wardens and rangers under this Act or the regulations by officers or employees in that Agency or authority, as the case may be.

(1A) However, an arrangement under subsection (1) must not provide for the performance or exercise of functions or powers under this Act or the regulations in relation to a Commonwealth reserve or conservation zone.

(2) The Minister may enter into an arrangement with the appropriate Minister of a State or of the Australian Capital Territory or of the Northern Territory for:

(a) officers or employees in the Public Service of the State or Territory, or in an authority of the State or Territory (including a local government body); or

(b) members of the police force of the State or Territory;

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to perform or exercise all or any of the functions or powers of wardens or rangers under this Act or the regulations.

(4) The Director may make arrangements with an Agency Head (within the meaning of the *Public Service Act 1999*), or with an authority of the Commonwealth, for the performance or exercise of all or any of the functions or powers of wardens and rangers under this Act or the regulations by officers or employees in that Agency or authority, as the case may be.

394 Wardens ex officio

By force of this section each of the following is a warden:

(a) each member or special member of the Australian Federal Police;

(b) each officer of Customs.

395 Identity cards

(1) The Minister must issue to each warden (except a member of a police force or an officer of Customs) and to each ranger, an identity card, in a form approved by the Minister, containing a photograph of the person to whom it is issued.

(2) If a person stops being a warden or ranger, the person must immediately return his or her identity card to the Minister.

(3) A person who contravenes subsection (2) commits an offence punishable on conviction by a fine not exceeding one penalty unit.

Subdivision B—Inspectors

396 Appointment of inspectors

(1) The Minister may, in writing, appoint a person to be an inspector.

(2) The Minister may make a written determination that a specified person, or a person included in a specified class of persons, does not have such of the powers conferred on an inspector by this Act

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as are specified in the determination. The determination has effect accordingly.

(3) If the Minister makes a determination under subsection (2) about a named individual, the Minister must give the individual a copy of the determination.

397 Inspectors ex officio

(1) By force of this section each of the following is an inspector:
  (a) each member or special member of the Australian Federal Police;
  (b) each person appointed as an inspector under subsection 43(1) of the *Great Barrier Reef Marine Park Act 1975* (other than such a person whose appointment relates only to the powers of an inspector under Part VIIA of that Act);
  (c) each officer of Customs.

(2) Paragraph (1)(b) does not apply for the purposes of the application of this Act to an offence against, or a matter relating to, Part 13A.

(3) By force of this section, for the purposes of the application of this Act to an offence against, or a matter relating to, Part 13A, each of the following is an inspector:
  (b) each member of the police force of an external Territory;
  (c) each biosecurity officer (within the meaning of the *Biosecurity Act 2015*).

Note: Part 13A deals with international movement of wildlife specimens.

398 Arrangements for State and Territory officers to be inspectors

(1) The Minister may enter into an arrangement with the appropriate Minister of a State or of the Australian Capital Territory or of the Northern Territory for:
  (a) officers or employees of the Public Service of the State or Territory, or of an authority of the State or Territory (including a local government body); or
  (b) members of the police force of the State or Territory;

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to be inspectors, and that arrangement has effect accordingly.

(3) The Minister may make a written determination that a specified person, or a person included in a specified class of persons, who is an inspector because of this section does not have such of the powers conferred on an inspector by this Act as are specified in the determination. The determination has effect accordingly.

(4) If the Minister makes a determination under subsection (3) about a named individual, the Minister must give the individual a copy of the determination.

399 Identity cards

(1) The Minister must issue to an inspector an identity card in a form approved by the Minister, containing a photograph of the person to whom it is issued.

(1A) Subsection (1) does not apply in relation to an inspector who is:

(a) a member of a police force; or

(b) an inspector by force of paragraph 397(1)(b); or

(c) an officer of Customs.

(2) If a person stops being an inspector, the person must immediately return his or her identity card to the Minister.

(3) A person who contravenes subsection (2) commits an offence punishable on conviction by a fine not exceeding one penalty unit.

(4) For the purposes of this Act, a requirement for a person who is an inspector by force of paragraph 397(1)(b) to produce his or her identity card is satisfied if the person shows his or her identity card issued under section 45 of the *Great Barrier Reef Marine Park Act 1975*.

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Subdivision BA—Exercise of powers of authorised officers outside the territorial sea

399A Powers to be exercised consistently with UNCLOS

(1) This section applies in relation to the powers of an authorised officer under this Part (including powers an authorised officer has under or because of a search warrant or a monitoring warrant), to the extent that the powers are otherwise permitted to be exercised:

(a) outside the territorial sea; and

(b) in relation to a person, aircraft or vessel, other than a person aircraft or vessel of a kind referred to in any of paragraphs 5(3)(a) to (h).

(2) The powers of an authorised officer, to the extent to which this section applies to them, must be exercised consistently with Australia's rights and obligations under:

(a) UNCLOS; and

(b) any other international agreements specified in regulations made for the purposes of this section.

(3) In this section:

UNCLOS means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31. In 2006, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Subdivision BB—Exercise of powers of authorised officers in relation to Great Barrier Reef Marine Park

399B Certain powers to be exercised only by certain authorised officers

(1) The powers of an authorised officer in relation to:

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(a) an offence against an environmental law that is the *Great Barrier Reef Marine Park Act 1975* or regulations made under that Act; or

(b) an environmental penalty provision that is a civil penalty provision of that Act; or

(c) a thing that may be done for the purposes of that Act;

may only be exercised by an authorised officer who is an inspector by force of paragraph 397(1)(a) or (b).

(2) To avoid doubt, an authorised officer who is an inspector by force of paragraph 397(1)(a) or (b) and also by force of paragraph 397(1)(c) is an authorised officer who may exercise the powers referred to in subsection (1).

Subdivision C—Miscellaneous

400 Regulations may give wardens, rangers and inspectors extra powers, functions and duties

The regulations may provide for functions and powers to be conferred, and duties to be imposed, on wardens, rangers and inspectors.

401 Impersonating authorised officers and rangers

(1) A person commits an offence if:

(a) the person:

(i) impersonates an authorised officer or a ranger on an occasion; and

(ii) does so knowing it to be an occasion when the officer or ranger would be on duty and doing an act or attending a place; or

(b) the person:

(i) falsely represents himself or herself to be an authorised officer or a ranger; and

(ii) does an act or attends a place in the assumed character of that officer or ranger; or

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(c) the person:
(i) impersonates an authorised officer or a ranger or falsely represents himself or herself to be an authorised officer or a ranger; and
(ii) does so with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty.

(2) Subsection (1) does not apply to an authorised officer or a ranger.

(3) An authorised officer or a ranger commits an offence if:
(a) the officer or ranger:
(i) impersonates another authorised officer or ranger on an occasion; and
(ii) does so knowing it to be an occasion when the other officer or ranger would be on duty and doing an act or attending a place; or
(b) the officer or ranger:
(i) falsely represents himself or herself to be another authorised officer or a ranger; and
(ii) does an act or attends a place in the assumed character of the other officer or ranger; or
(c) the officer or ranger:
(i) impersonates another authorised officer or a ranger or falsely represents himself or herself to be another authorised officer or a ranger; and
(ii) does so with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty.

(4) An offence against this section is punishable, on conviction, by imprisonment for not more than 2 years or a fine not exceeding 120 penalty units, or both.

402 Offences against authorised officers and rangers

(1) A person commits an offence if the person:
(a) uses or threatens violence against another person; and

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(b) does so knowing that the other person is an authorised officer or a ranger; and

(c) does so because of that other person's status as an authorised officer or ranger.

(2) An offence against subsection (1) is punishable, on conviction, by imprisonment for not more than 7 years or a fine not exceeding 420 penalty units, or both.

(3) A person commits an offence if the person:

(a) obstructs, intimidates, resists or hinders another person who is an authorised officer or a ranger exercising or performing his or her powers, duties or functions; and

(b) does so knowing that the other person is an authorised officer or ranger.

(4) An offence against subsection (3) is punishable, on conviction, by imprisonment for not more than 2 years or a fine not exceeding 120 penalty units, or both.

(5) It is immaterial whether the defendant was aware that the authorised officer or ranger was engaged in the exercise or performance, or attempted exercise or performance of a power, duty or function of such officer or ranger.

(6) It is a defence in proceedings for an offence against subsection (3), if at the time of the conduct constituting the offence, the authorised officer or ranger was abusing his or her power.

(7) This section does not limit the power of a court to punish a contempt of that court.

(8) Subsections (1) and (3) are not intended to exclude or limit the concurrent operation of any law of the Australian Capital Territory in a case where the other person referred to in that subsection is a member or special member of the Australian Federal Police.

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Division 2—Boarding of vessels etc. and access to premises

403 Boarding of vessels etc. by authorised officers

(1) This section applies to:
  (a) any Australian vessel or Australian aircraft, whether or not it is in the Australian jurisdiction; or
  (b) any other vessel or aircraft, or any vehicle or platform, that is in the Australian jurisdiction.

(2) If an authorised officer suspects on reasonable grounds that there is in, or on, a vehicle, vessel, aircraft or platform to which this section applies any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, the authorised officer may, with such assistance as he or she thinks necessary:
  (a) board the vehicle, vessel, aircraft or platform at any reasonable time for the purpose of exercising, and may exercise, the powers of an authorised officer under section 406; and
  (b) in the case of a vehicle, vessel or aircraft—stop and detain the vehicle, vessel or aircraft for that purpose.

(2A) An authorised officer who boards a vehicle, vessel, aircraft or platform under paragraph (2)(a) may require a person on the vehicle, vessel, aircraft or platform to:
  (a) answer a question asked by the authorised officer; or
  (b) give the authorised officer information requested by the authorised officer; or
  (c) produce to the authorised officer records or documents kept on the vehicle, vessel, aircraft or platform.

(3) If an authorised officer or the person in command of a Commonwealth ship or of a Commonwealth aircraft suspects on reasonable grounds that a vessel to which this section applies has

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been used or otherwise involved in the commission of an offence against an environmental law, he or she may:

(a) bring the vessel to the nearest port in Australia or an external Territory to which it is safe and practicable to bring the vessel; or

(b) by means of an international signal code or other internationally recognised means of communication with a vessel, require the person in charge of the vessel to bring the vessel to that port.

(4) An authorised officer, or the person in command of a Commonwealth ship or of a Commonwealth aircraft, may require the person in charge of an aircraft to which this section applies to bring the aircraft to the nearest airport in Australia or an external Territory to which it is safe and practicable to bring the aircraft if:

(a) the authorised officer, or the person in command of the Commonwealth ship or Commonwealth aircraft, suspects on reasonable grounds that the aircraft has been used or otherwise involved in the commission of an offence against an environmental law; and

(b) the requirement is made by means of an international signal code or other internationally recognised means of communication with an aircraft.

(5) An authorised officer may, for the purposes of this Act or the *Great Barrier Reef Marine Park Act 1975* (other than Part VIIA of that Act (compulsory pilotage)), require the person in charge of a vehicle, vessel, aircraft or platform to which this section applies to give information concerning any or all of the following:

(a) the vehicle, vessel, aircraft or platform;

(b) the crew or any other person on board the vehicle, vessel, aircraft or platform;

(c) in the case of a vessel—any dory being operated in association with the vessel;

(d) in the case of a vessel—any person operating a dory in association with the vessel.

(5A) A person commits an offence if:

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(a) a requirement is made of the person under this section; and
(b) the person fails to comply with the requirement.

Penalty:
(a) if the requirement is made under subsection (2A)—imprisonment for 6 months or 30 penalty units, or both; or
(b) if the requirement is made under subsection (3), (4) or (5)—50 penalty units.

(5B) If there is a restraint on the liberty of a person on a vessel resulting from an authorised officer's exercise of a power under this section in relation to the vessel:
(a) the restraint is not unlawful; and
(b) civil or criminal proceedings in respect of the restraint may not be instituted or continued in any court against:
(i) the authorised officer; or
(ii) any person assisting the authorised officer in the exercise of the power; or
(iii) the Commonwealth.

This subsection is not intended to affect the jurisdiction of the High Court under section 75 of the Constitution.

(5C) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

(6) In this Act:

Commonwealth aircraft means an aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is displayed.

Commonwealth ship means a ship in the service of the Commonwealth on which the prescribed ensign of the ship is flying.

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404 Authorised officers to produce identification

(1) If an authorised officer (subject to subsection (1A)) boards a vehicle, vessel, aircraft or platform under section 403, the authorised officer must:

(a) in the case of a member of a police force—produce, for inspection by the person in charge of that vehicle, vessel, aircraft or platform, written evidence of the fact that he or she is a member of that police force; or

(aa) in the case of an officer of Customs—produce, for inspection by the person in charge of that vehicle, vessel, aircraft or platform, written evidence of the fact that he or she is an officer of Customs; or

(b) in any other case—produce his or her identity card for inspection by that person.

(1A) Subsection (1) does not apply to an authorised officer if:

(a) the authorised officer is a member of a police force or an officer of Customs; and

(b) the officer is in uniform.

(2) An authorised officer who does not comply with subsection (1) is not authorised to remain, or to require any person assisting the authorised officer to remain, on board the vehicle, vessel, aircraft or platform, or to detain the vehicle, vessel or aircraft.

(3) If an authorised officer (subject to subsection (3A)) makes a requirement of a person under section 403 the authorised officer, unless it is impracticable to do so, must:

(a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; or

(aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or

(b) in any other case—produce his or her identity card for inspection by that person;

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and, if the authorised officer fails to do so, that person is not obliged to comply with the requirement.

(3A) Subsection (3) does not apply to an authorised officer if:

(a) the authorised officer is a member of a police force or an officer of Customs; and

(b) the officer is in uniform.

405 Access to premises

(1) An authorised officer may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the powers of an authorised officer under section 406.

(2) If an authorised officer enters any premises under subsection (1), he or she may exercise the powers of an authorised officer under section 406.

(3) An authorised officer who enters premises under subsection (1) must, if the occupier of the premises revokes his or her consent, leave the premises forthwith, and is not entitled to exercise, or continue to exercise, the powers of an authorised officer under section 406 in relation to the premises.

(4) An authorised officer is not entitled to:

(a) enter premises under subsection (1); or

(b) exercise any powers as mentioned in subsection (2);

if the occupier of the premises has required the officer to produce written identification for inspection by the occupier and:

(c) if the authorised officer is a member of a police force—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is a member of that police force; or

(d) if the authorised officer is an officer of Customs—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is an officer of Customs; or

(e) in any other case—the officer fails to produce his or her identity card for inspection by the occupier.

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406 Powers of authorised officers

(1) An authorised officer who boards a vehicle, vessel, aircraft or platform under section 403, or enters premises under section 405 may:

(a) inspect and search the vehicle, vessel, aircraft, platform or premises, as the case may be; and

(aa) take photographs (including a video recording), and make sketches, of the premises or of any substance or thing on the vehicle, vessel, aircraft, platform or premises; and

(b) inspect, take extracts from, and make copies of, any document that is, or that the authorised officer suspects on reasonable grounds is, evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; and

(ba) in the case of an authorised officer who boards a vessel under section 403—subject to section 406A, search without warrant:

(i) a person on the vessel; and

(ii) the person's clothing;

to find out whether there is hidden on the person or in the clothing:

(iii) an eligible seizable item; or

(iv) a thing that may be evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; and

(c) inspect, and take samples of, any other evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; and

(ca) take measurements of, and conduct tests on, the vehicle, vessel, aircraft, platform or premises or any substance or thing on the vehicle, vessel, aircraft, platform or premises; and

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(d) exercise powers of seizure conferred on the authorised officer by section 444A or 445; and

(e) take onto the vehicle, vessel, aircraft, platform or premises any equipment or material reasonably necessary for the purpose of exercising a power referred to in any of the other paragraphs of this subsection.

(2) For the purposes of this Part, ***evidential material*** means:

(a) in relation to an offence against an environmental law:

(i) any thing with respect to which the offence has been committed or is suspected, on reasonable grounds, of having been committed; or

(ii) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of the offence; or

(iii) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing the offence; and

(b) in relation to a contravention of an environmental penalty provision:

(i) any thing with respect to which the environmental penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or

(ii) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the contravention of the environmental penalty provision; or

(iii) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of contravening the environmental penalty provision.

(2A) A reference to a thing in subsection (2) includes a reference to any such thing in electronic form.

(3) For the purposes of exercising a power under subsection (1), an authorised officer may break open any hold or compartment, or any container or other receptacle (including any place that could be

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used as a receptacle), on a vehicle, vessel, aircraft or platform or on any premises.

406A Searches under paragraph 406(1)(ba)

(1) A search under paragraph 406(1)(ba) of a person (the ***subject***) may only be conducted by an authorised officer of the same sex as the subject.

(2) However, if an authorised officer of the same sex as the subject is not available to conduct the search, it may be conducted by another person who:
  (a) is of the same sex as the subject; and
  (b) agrees, at the request of an authorised officer, to conduct the search.

(3) Paragraph 406(1)(ba) and this section do not authorise the authorised officer or other person:
  (a) to remove any of the subject's clothing; or
  (b) to require the subject to remove any of his or her clothing; or
  (c) to use more force, or subject the subject to greater indignity, than is reasonably necessary to conduct the search.

406AA Taking things into possession

(1) This section applies if, in conducting a search referred to in paragraph 406(1)(a) or (ba), an authorised officer or a person who conducts a search because of subsection 406A(2) finds:
  (a) an eligible seizable item; or
  (b) a thing that may be evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.

(2) An authorised officer may:
  (a) take possession of the item or thing; and

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(b) keep the item or thing for so long as he or she thinks necessary for the purposes of this Act or the *Great Barrier Reef Marine Park Act 1975*.

(3) A person who conducts a search because of subsection 406A(2) must take possession of the item or thing and give it to an authorised officer.

(4) An authorised officer who is given an item or thing under subsection (3) may keep it for so long as he or she thinks necessary for the purposes of this Act or the *Great Barrier Reef Marine Park Act 1975*.

(5) If:

(a) an authorised officer is keeping an item or thing under subsection (2) or (4); and

(b) the item or thing was found in conducting a search of a person under paragraph 406(1)(ba); and

(c) the person is detained under Schedule 1;

the authorised officer may continue to keep the item or thing for so long as he or she thinks necessary for the purposes of this Act, the *Great Barrier Reef Marine Park Act 1975* or the *Migration Act 1958*.

Note: Once the person ceases to be detained under Schedule 1, the person will generally need to be detained under the *Migration Act 1958* while he or she is in the migration zone (because his or her enforcement visa under that Act will cease to have effect). Subsection (5) ensures the officer can keep the item or thing while the person is detained under this Act or that Act.

406B Thing taken into possession is not a thing seized

A reference in this Act to a thing (however described) seized under this Part or this Act does not include a reference to a thing that has been taken into possession under section 406AA or Schedule 1.

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Division 3—Monitoring of compliance

407 Monitoring powers

(1) For the purposes of this Division, each of the following powers is a ***monitoring power*** in relation to particular premises:

(a) the power to inspect and search the premises;

(b) the power to take photographs (including a video recording), or to make sketches, of the premises or of any substance or thing at the premises;

(c) the power to inspect, examine and take samples of, any substance or thing on or in the premises;

(ca) the power to take measurements of, and conduct tests on, the premises or any substance or thing on the premises;

(cb) the power to mark a live specimen on the premises (see subsection (2));

(d) the power to take extracts from, or make copies of, any document, book or record on the premises;

(da) the powers to operate electronic equipment, and do other things, at the premises as mentioned in section 407A;

(e) the power to take onto the premises any equipment or material reasonably necessary for the purpose of exercising a power referred to in any other paragraph of this subsection.

(2) For the purposes of paragraph (1)(cb), ***mark*** includes:

(a) in the case of a live plant:

(i) mark or label a cage or container in which the plant is kept or in which the plant is growing; and

(ii) place a label or tag on the plant; and

(b) in the case of a live animal:

(i) implant a scannable device in the animal; and

(ii) place a band on any part of the animal; and

(iii) place (whether by piercing or otherwise) a tag or ring on any part of the animal; and

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(iv) mark or label a cage or container within which the animal is kept.

(3) If:

(a) damage is caused to a specimen, or a cage or container in which a specimen is kept, as a result of an authorised officer exercising the power to mark under paragraph (1)(cb); and

(b) the damage was caused as a result of insufficient care being exercised by the authorised officer;

compensation for the damage is payable to the owner of the specimen, or to the owner of the cage or container, as the case requires.

(4) Compensation is payable out of money appropriated by the Parliament for the purpose.

(5) In determining the amount of compensation payable, regard is to be had to whether the owner, if the owner was available at the time, had provided any warning or guidance relating to the marking of the specimen, cage or container.

407A Operation of electronic equipment at premises

Monitoring powers include the powers set out in this section

(1) Monitoring powers in relation to premises include the powers set out in this section. This section does not authorise these powers to be exercised otherwise than in situations in which this Division allows monitoring powers to be exercised.

Operation of equipment

(2) An authorised officer may operate electronic equipment at premises to see whether relevant material is accessible by doing so, if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

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Seizure etc.

(3) If an authorised officer operates electronic equipment at premises under subsection (2), and the authorised officer finds that relevant material is accessible by doing so, he or she may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the relevant material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or

(c) if the relevant material can be transferred to a disk, tape or other storage device that:

(i) is brought to the premises; or

(ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

Limitation on seizure

(4) An authorised officer may seize equipment under paragraph (3)(a) only if:

(a) it is not practicable to put the relevant material in documentary form as mentioned in paragraph (3)(b) or to copy the material as mentioned in paragraph (3)(c); or

(b) possession of the equipment by the occupier could constitute an offence.

How this Part applies to things seized

(5) The other provisions of this Part apply in relation to a thing seized under paragraph (3)(a) or (b) as if the thing had been seized under section 445.

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Securing equipment

(6) If an authorised officer believes on reasonable grounds that:
  (a) relevant material may be accessible by operating electronic equipment at the premises; and
  (b) expert assistance is required to operate the equipment; and
  (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

Notice about securing equipment

(7) An authorised officer who wishes to secure electronic equipment under subsection (6) must give notice to the occupier of the premises of:
  (a) his or her intention to secure the equipment; and
  (b) the fact that the equipment may be secured for up to 24 hours.

Period for which equipment may be secured

(8) Electronic equipment may be secured under subsection (6):
  (a) for a period not exceeding 24 hours; or
  (b) until the equipment has been operated by the expert;

whichever happens first.

Extension of period

(9) If an authorised officer believes on reasonable grounds that expert assistance will not be available within 24 hours, the authorised officer may apply to a magistrate for an extension of that period.

Notice to occupier

(10) An authorised officer must give notice to the occupier of the premises of his or her intention to apply for an extension under

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subsection (9), and the occupier is entitled to be heard in relation to the application.

Provisions relating to extensions

(11) The provisions of this Division relating to the issue of a monitoring warrant apply, with such modifications as are necessary, to the issuing of an extension.

Definition

(12) In this section:

relevant material means:

(a) evidential material; or

(b) any other material that is relevant for the purposes of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

407B Compensation for damage to electronic equipment

(1) If:

(a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and

(b) the damage was caused as a result of:

(i) insufficient care being exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care being exercised by the person operating the equipment;

compensation for the damage is payable to the owner of the equipment.

(2) Compensation is payable out of money appropriated by the Parliament for the purpose.

(3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had

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provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

408 Monitoring searches with occupier's consent

Entry by consent

(1) An authorised officer may, with the consent of the occupier of any premises, enter the premises for the purpose of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

Entry for monitoring purposes

(2) An authorised officer may only enter premises under subsection (1) to the extent that it is reasonably necessary for the purpose of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

Exercise of monitoring powers

(3) If an authorised officer enters premises under subsection (1), the authorised officer may exercise monitoring powers in relation to those premises.

Exercise of seizure powers

(4) If an authorised officer enters premises under subsection (1), the authorised officer may exercise powers of seizure conferred by section 444A or 445.

Right to refuse to give consent

(5) Before obtaining the consent of a person for the purposes of this section, an authorised officer must tell the person that the person may refuse to give consent.

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Consent must be voluntary

(6) An entry by an authorised officer in consequence of the consent of a person is not lawful unless the person voluntarily consented to the entry.

Production of identity card etc.

(7) An authorised officer is not entitled to:

(a) enter premises under subsection (1); or

(b) exercise any powers referred to in subsection (3) or (4) in relation to premises;

if the occupier of the premises has required the officer to produce written identification for inspection by the occupier and:

(c) if the authorised officer is a member of a police force—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is a member of that police force; or

(ca) if the authorised officer is an officer of Customs—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is an officer of Customs; or

(d) in any other case—the officer fails to produce his or her identity card for inspection by the occupier.

Extension to vehicles, vessels and aircraft

(8) Subsections (1), (2), (3), (4), (5), (6) and (7) apply in relation to:

(a) a vehicle, vessel or aircraft in the same way as they apply in relation to premises; and

(b) a person apparently in charge of a vehicle, vessel or aircraft in the same way as they apply in relation to the occupier of premises.

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409 Monitoring warrants

Application for monitoring warrant

(1) An authorised officer may apply to a magistrate for a warrant under this section in relation to particular premises. The warrant is to be known as a ***monitoring warrant***.

Note: Urgent applications may be made by telephone or other electronic means under section 409A.

Issue of monitoring warrant

(2) Subject to subsection (3), the magistrate may issue the monitoring warrant if satisfied, by information on oath or affirmation, that it is reasonably necessary that the authorised officer should have access to the premises for the purpose of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

Information about grounds for issue of monitoring warrant

(3) The magistrate must not issue the monitoring warrant unless the authorised officer or another person has given the magistrate, either orally (on oath or affirmation) or by affidavit, such further information as the magistrate requires about the grounds on which the issue of the monitoring warrant is being sought.

Terms of warrant

(4) The monitoring warrant must:

(a) name an authorised officer who, unless he or she inserts the name of another authorised officer in the warrant, is to be responsible for executing the warrant; and

(aa) authorise the executing officer, with such assistance and by such force as is necessary and reasonable, from time to time while the monitoring warrant remains in force:

(i) to enter the premises; and

(ii) to exercise monitoring powers in relation to the premises; and

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(b) state whether an entry under the monitoring warrant is authorised to be made at any time of the day or night or during specified hours of the day or night; and

(c) specify the day (not more than 6 months after the issue of the monitoring warrant) on which the monitoring warrant ceases to have effect; and

(d) state the purpose for which the monitoring warrant is issued.

Seizure powers

(5) If an authorised officer enters premises under a monitoring warrant, he or she may exercise powers of seizure conferred by section 444A or 445.

409A Monitoring warrants by telephone or other electronic means

Application

(1) An authorised officer may make an application to a magistrate for a monitoring warrant by telephone, telex, fax or other electronic means:

(a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the monitoring warrant.

Voice communication

(2) The magistrate:

(a) may require communication by voice to the extent that is practicable in the circumstances; and

(b) may make a recording of the whole or any part of any such communication by voice.

Information

(3) An application under this section must include all information as required to be provided in an application under section 409, but the

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application may, if necessary, be made before the information is sworn or affirmed.

Issue of monitoring warrant

(4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:

(a) a monitoring warrant in the terms of the application should be issued urgently; or

(b) the delay that would occur if an application were made in person would frustrate the effective execution of the monitoring warrant;

the magistrate may complete and sign the same form of monitoring warrant that would be issued under section 409.

Notification

(5) If the magistrate decides to issue the monitoring warrant, the magistrate must inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the monitoring warrant and the day on which and the time at which it was signed.

Form of monitoring warrant

(6) The applicant must then complete a form of monitoring warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the monitoring warrant was signed.

Completed form of monitoring warrant to be given to magistrate

(7) The applicant must, not later than 48 hours after making the application, give or transmit to the magistrate:

(a) the form of monitoring warrant completed by the applicant; and

(b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.

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Attachment of form of warrant to subsection (7) documents

(8) The magistrate must attach to the documents provided under subsection (7) the form of monitoring warrant completed by the magistrate.

Presumption if form of warrant not produced in evidence

(9) If:

(a) it is material, in any proceeding, for a court to be satisfied that the exercise of a power under a monitoring warrant issued under this section was duly authorised; and

(b) the form of monitoring warrant signed by the magistrate is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

Court may admit evidence even if subsection (7) or (8) not complied with

(10) A court may admit evidence obtained because of the issue of a warrant pursuant to this section even if either or both of subsections (7) and (8) have not been complied with if, having regard to the nature of and reasons for the non-compliance and any other relevant matters, the court is satisfied that it was not practicable to comply with that subsection or those subsections (as the case requires).

409B Executing officer to be in possession of warrant

When executing a warrant, the executing officer must be in possession of:

(a) the original warrant issued by the magistrate under section 409, or a copy of the original warrant as so issued; or

(b) the original form of warrant completed under subsection 409A(6), or a copy of the original form as so completed.

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410 Details of monitoring warrant to be given to occupier etc.

(1) If a monitoring warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the executing officer must make available to that person a copy of the monitoring warrant.

(2) The executing officer must identify himself or herself to that person at the premises.

(3) The copy of the monitoring warrant referred to in subsection (1) need not include the signature of the magistrate or the seal of the relevant court.

411 Occupier entitled to be present during search

(1) If a monitoring warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search being conducted.

(2) The right to observe the search being conducted ceases if the person impedes the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

412 Announcement before entry

(1) Before any person enters premises under a monitoring warrant, the executing officer must:

(a) announce that he or she is authorised to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

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(2) The executing officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
  (a) the safety of a person (including an authorised officer); or
  (b) that the effective execution of the monitoring warrant is not frustrated.

412A Other powers when on premises under monitoring warrant

(1) If the executing officer enters premises under a monitoring warrant, he or she may require a person on the premises to:
  (a) answer a question asked by the executing officer; or
  (b) give the executing officer information requested by the executing officer; or
  (c) produce to the executing officer records or documents kept on the premises.

(2) A person commits an offence if:
  (a) the executing officer has entered premises under a monitoring warrant; and
  (b) the person is on the premises; and
  (c) the executing officer requires the person to:
    (i) answer a question asked by the executing officer; or
    (ii) give the executing officer information requested by the executing officer; or
    (iii) produce to the executing officer records or documents kept on the premises; and
  (d) the person contravenes the requirement.

(3) The offence is punishable on conviction by imprisonment for a term not more than 6 months, a fine of not more than 30 penalty units, or both.

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Division 4—Search warrants

413 When search warrants can be issued

(1) A magistrate may issue a warrant authorising an authorised officer to search premises if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, at the premises evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.

(2) A magistrate may issue a warrant authorising an authorised officer to carry out an ordinary search or a frisk search of a person if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that the person has in his or her possession, or will within the next 72 hours have in his or her possession, any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.

(3) For the purposes of this Act, ***frisk search*** means:
  (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
  (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

(4) If the authorised officer applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the authorised officer must state that suspicion, and the grounds for that suspicion, in the information.

(5) If the application for the warrant is made under section 416, this section applies as if subsections (1) and (2) referred to 48 hours rather than 72 hours.

(6) If the applicant for a warrant is a member or special member of the Australian Federal Police and has, at any time previously, applied

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for a warrant relating to the same person or premises, the person must state particulars of those applications and their outcome in the information.

414 Statements in warrants

(1) If a magistrate issues a warrant under section 413, the magistrate is to state in the warrant:

(a) each offence and/or environmental penalty provision to which the warrant relates; and

(b) a description of the premises to which the warrant relates or the name or description of a person to whom it relates; and

(c) the kinds of evidential material that are to be searched for under the warrant; and

(d) the name of the authorised officer who, unless he or she inserts the name of another authorised officer in the warrant, is to be responsible for executing the warrant; and

(e) the period for which the warrant remains in force, which must not be more than 7 days; and

(f) if the warrant relates to premises—whether the premises may be entered at any time of the day or night or only during particular hours of the day or night; and

(g) if the warrant relates to a person—whether the search of the person may be carried out at any time of the day or night or only during particular hours of the day or night.

(2) The magistrate is also to state, in a warrant in relation to premises:

(a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:

(i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or

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(ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or

(iii) evidential material in relation to another contravention of an environmental penalty provision;

if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and

(b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or an officer assisting suspects on reasonable grounds that the person has in his or her possession:

(i) any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; or

(ii) any eligible seizable items.

(3) For the purposes of this Act, ***ordinary search*** means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and

(b) an examination of those items.

(4) The magistrate is also to state, in a warrant in relation to a person:

(a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found, in the course of the search, on or in the possession of the person or in an aircraft, vehicle or vessel that the person had operated or occupied at any time within 24 hours before the search began, being a thing that the executing officer or an officer assisting believes on reasonable grounds to be:

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(i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or

(ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or

(iii) evidential material in relation to another contravention of an environmental penalty provision;

if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and

(b) the kind of search of a person that the warrant authorises.

(5) Paragraph (1)(e) does not prevent the issue of successive warrants in relation to the same premises or person.

(6) If the application for the warrant is made under section 416, this section applies as if paragraph (1)(e) referred to 48 hours rather than 7 days.

415 Powers of magistrate

(1) A magistrate in a State or internal Territory may:

(a) issue a warrant in relation to premises or a person in that State or Territory; or

(b) issue a warrant in relation to premises or a person in an external Territory; or

(c) issue a warrant in relation to premises or a person in another State or internal Territory (including the Jervis Bay Territory) if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate; or

(d) issue a warrant in relation to a person wherever the person is in Australia or in an external Territory if he or she is satisfied that it is not possible to predict where the person may be.

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(2) A magistrate in New South Wales or the Australian Capital Territory may issue a warrant in relation to premises or a person in the Jervis Bay Territory.

416 Warrants by telephone or other electronic means

Application

(1) An authorised officer may make an application to a magistrate for a warrant by telephone, telex, fax or other electronic means:
  (a) in an urgent case; or
  (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

Voice communication

(2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.

Information

(3) An application under this section must include all information as required to be provided in an ordinary application for a warrant, but the application may, if necessary, be made before the information is sworn or affirmed.

Issue of warrant

(4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:
  (a) a warrant in the terms of the application should be issued urgently; or
  (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;

the magistrate may complete and sign the same form of warrant that would be issued under section 413.

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Notification

(5) If the magistrate decides to issue the warrant, the magistrate is to inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

Form of warrant

(6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

Completed form of warrant to be given to magistrate

(7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the magistrate:
  (a) the form of warrant completed by the applicant; and
  (b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.

Attachment

(8) The magistrate is to attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.

Presumption

(9) If:
  (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
  (b) the form of warrant signed by the magistrate is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

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417 The things that are authorised by a search warrant

Search of premises

(1) A warrant that is in force in relation to premises authorises the executing officer or an officer assisting:

(a) to enter the premises; and

(b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and

(c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and

(d) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:

(i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or

(ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or

(iii) evidential material in relation to another contravention of an environmental penalty provision;

if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and

(e) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be eligible seizable items; and

(f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an officer assisting suspects on

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reasonable grounds that the person has in his or her possession:

(i) any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; or

(ii) any eligible seizable items.

Search of a person

(2) A warrant that is in force in relation to a person authorises the executing officer or an officer assisting:

(a) to search:

(i) the person as specified in the warrant and things found in the possession of the person; and

(ii) any aircraft, vehicle or vessel that the person had operated or occupied at any time within 24 hours before the search began, for things specified in the warrant; and

(b) to:

(i) seize things of that kind; or

(ii) record fingerprints from things; or

(iii) take forensic samples from things;

found in the course of the search; and

(c) to seize other things found on or in the possession of the person or in the aircraft, vehicle or vessel mentioned in subparagraph (a)(ii) in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:

(i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or

(ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or

(iii) evidential material in relation to another contravention of an environmental penalty provision;

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if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and

(d) to seize other things found in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be eligible seizable items.

Hours when premises may be searched

(3) If a warrant in relation to premises states that the premises may be entered only during particular hours, the premises must not be entered outside those hours.

Hours when person may be searched

(3A) If a warrant in relation to a person states that the search of the person may be carried out only during particular hours, the search must not be carried out outside those hours.

Ordinary searches or frisk searches

(4) If a warrant authorises an ordinary search or a frisk search of a person, a search of the person different from that so authorised must not be done.

Seized items may be made available to other agencies

(5) If things are seized under a warrant, the warrant authorises the executing officer to make the things available to officers of other agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

418 Availability of assistance, and use of force, in executing a warrant

(1) In executing a warrant:

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(a) the executing officer may obtain such assistance as is necessary and reasonable in the circumstances; and

(b) the executing officer, or an authorised officer who is assisting in executing the warrant, may use such force against persons and things as is necessary and reasonable in the circumstances; and

(c) a person who is not an authorised officer, but who has been authorised to assist in executing the warrant, may use such force against things as is necessary and reasonable in the circumstances.

(2) A person who is not an authorised officer must not take part in searching or arresting a person.

418A Executing officer to be in possession of warrant

When executing a warrant, the executing officer must be in possession of:

(a) the original warrant issued by the magistrate under section 415, or a copy of the original warrant as so issued; or

(b) the original form of warrant completed under subsection 416(6), or a copy of the original form as so completed.

419 Details of warrant to be given to occupier etc.

(1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing officer or an officer assisting must make available to that person a copy of the warrant.

(2) If a warrant in relation to a person is being executed, the executing officer or an officer assisting must make available to that person a copy of the warrant.

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(3) If a person is searched under a warrant in relation to premises, the executing officer or an officer assisting must show the person a copy of the warrant.

(4) The executing officer must identify himself or herself to the person at the premises or the person being searched, as the case may be.

(5) The copy of the warrant referred to in subsections (1) and (2) need not include the signature of the magistrate who issued the warrant.

420 Specific powers available to person executing warrant

(1) In executing a warrant in relation to premises, the executing officer or an officer assisting may take photographs (including video recordings) of the premises or of things at the premises:
  (a) for a purpose incidental to the execution of the warrant; or
  (b) if the occupier of the premises consents in writing.

(2) If a warrant in relation to premises is being executed, the executing officer and all officers assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises:
  (a) for not more than one hour; or
  (b) for a longer period if the occupier of the premises consents in writing.

(3) The execution of a warrant that is stopped by an order of a court may be completed if:
  (a) the order is later revoked or reversed on appeal; and
  (b) the warrant is still in force.

421 Use of equipment to examine or process things

(1) The executing officer or an officer assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.

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(2) If:

(a) it is not practicable to examine or process the things at the warrant premises; or

(b) the occupier of the premises consents in writing;

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.

(3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:

(a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and

(b) allow the occupier or his or her representative to be present during the examination or processing.

(4) The executing officer or an officer assisting may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or an officer assisting believes on reasonable grounds that:

(a) the equipment is suitable for the examination or processing; and

(b) the examination or processing can be carried out without damage to the equipment or thing.

422 Use of electronic equipment at premises

Operation of equipment

(1) The executing officer or an officer assisting may operate electronic equipment at the premises to see whether evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, is accessible by doing so if he or she believes on

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reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Seizure etc.

(2) If the executing officer or an officer assisting, after operating the equipment, finds that evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, is accessible by doing so, he or she may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or

(c) if the material can be transferred to a disk, tape or other storage device that:

(i) is brought to the premises; or

(ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

Limitation on seizure

(3) A person may seize equipment under paragraph (2)(a) only if:

(a) it is not practicable to put the material in document form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or

(b) possession of the equipment by the occupier could constitute an offence.

Securing equipment

(4) If the executing officer or an officer assisting believes on reasonable grounds that:

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(a) evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, may be accessible by operating electronic equipment at the premises; and
(b) expert assistance is required to operate the equipment; and
(c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

Notice about securing equipment

(5) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

Period for which equipment may be secured

(6) The equipment may be secured:
(a) for a period not exceeding 24 hours; or
(b) until the equipment has been operated by the expert;

whichever happens first.

Extension of period

(7) If the executing officer or an officer assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of that period.

Notice to occupier

(8) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to apply for an

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extension, and the occupier is entitled to be heard in relation to the application.

Provisions relating to extensions

(9) The provisions of this Division relating to the issue of warrants apply, with such modifications as are necessary, to the issuing of an extension.

423 Compensation for damage to electronic equipment

(1) If:

(a) damage is caused to equipment as a result of it being operated as mentioned in section 421 or 422; and

(b) the damage was caused as a result of:

(i) insufficient care being exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care being exercised by the person operating the equipment;

compensation for the damage is payable to the owner of the equipment.

(2) Compensation is payable out of money appropriated by the Parliament for the purpose.

(3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

424 Copies of seized things to be provided

(1) Subject to subsection (2), if an authorised officer seizes, under a warrant relating to premises:

(a) a document, film, computer file or other thing that can be readily copied; or

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(b) a storage device the information in which can be readily copied;

the authorised officer must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

(2) Subsection (1) does not apply if:

(a) the thing that has been seized was seized under paragraph 422(2)(b) or (c); or

(b) possession of the document, film, computer file, thing or information by the occupier could constitute an offence.

425 Occupier entitled to be present during search

(1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search being conducted.

(2) The right to observe the search being conducted ceases if the person impedes the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

426 Receipts for things seized under warrant

(1) If a thing is seized under a warrant or moved under subsection 421(2), the executing officer or an officer assisting must provide a receipt for the thing.

(2) If 2 or more things are seized or moved, they may be covered in the one receipt.

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427 Restrictions on personal searches

A warrant cannot authorise a strip search or a search of a person's body cavities.

428 When a thing is in the possession of a person

This Division applies to a person (the ***possessor***) who has a thing under his or her control in any place (whether for the use or benefit of the possessor or of another person), even if another person has the actual possession or custody of the thing, as if the possessor has possession of the thing.

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Division 6—Arrest and related matters

430 Powers of arrest

(1) An authorised officer may, without warrant, arrest any person, if the authorised officer believes on reasonable grounds that:

(a) the person is committing or has committed an offence against an environmental law; and

(b) proceedings against the person by summons would not be effective.

(2) If an authorised officer (subject to subsection (2A)) arrests a person under subsection (1), the authorised officer must:

(a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; and

(aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; and

(b) in any other case—produce his or her identity card for inspection by that person.

(2A) Subsection (2) does not apply to an authorised officer if:

(a) the authorised officer is a member of a police force or an officer of Customs; and

(b) the officer is in uniform.

(3) If a person is arrested under subsection (1), an authorised officer must without unreasonable delay bring the person, or cause the person to be brought, before a Justice of the Peace or other proper authority to be dealt with in accordance with law.

(4) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

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431 Power to conduct a frisk search of an arrested person

An authorised officer who arrests a person for an offence against an environmental law, or who is present at such an arrest, may, if the authorised officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the arrested person is carrying any eligible seizable items:

(a) conduct a frisk search of the arrested person at or soon after the time of arrest; and

(b) seize any eligible seizable items found as a result of the search.

432 Power to conduct an ordinary search of an arrested person

An authorised officer who arrests a person for an offence against an environmental law, or who is present at such an arrest, may, if the authorised officer suspects on reasonable grounds that the arrested person is carrying:

(a) evidential material in relation to that or another offence against an environmental law; or

(aa) evidential material in relation to a contravention of an environmental penalty provision; or

(b) an eligible seizable item;

conduct an ordinary search of the arrested person at or soon after the time or arrest, and seize any such thing found as a result of the search.

433 Power to conduct search of arrested person's premises

An authorised officer who arrests a person at premises for an offence against an environmental law, or who is present at such an arrest, may seize a thing in plain view at those premises that the authorised officer believes on reasonable grounds to be:

(a) evidential material in relation to that or another offence against an environmental law; or

(aa) evidential material in relation to a contravention of an environmental penalty provision; or

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(b) an eligible seizable item.

433A Interaction of this Division with Schedule 1

This Division does not limit, and is not limited by, Schedule 1. In particular, the detention of a person under Schedule 1 is not to be taken to constitute the arrest of the person for the purposes of this Division.

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Division 6A—Provisions relating to detention of suspected foreign offenders

433B Provisions relating to detention of suspected foreign offenders

Schedule 1 has effect.

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Division 7—Miscellaneous provisions about searches, entry to premises, warrants etc.

434 Conduct of ordinary searches and frisk searches

An ordinary search or a frisk search of a person under this Part must, if practicable, be conducted by a person of the same sex as the person being searched.

435 Announcement before entry

(1) An authorised officer must, before any person enters premises under a warrant or to arrest a person under this Act:
  (a) announce that he or she is authorised to enter the premises; and
  (b) give any person at the premises an opportunity to allow entry to the premises.

(2) An authorised officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
  (a) the safety of a person (including an authorised officer); or
  (b) that the effective execution of the warrant or the arrest is not frustrated.

436 Offence of making false statements in warrants

A person commits an offence punishable upon conviction by imprisonment for a term not exceeding 2 years if the person:
  (a) makes a statement in an application for a warrant; and
  (b) does so knowing the statement is false or misleading in a material particular.

437 Offences relating to telephone warrants

A person must not:

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(a) state in a document that purports to be a form of warrant under section 409A or 416 the name of a magistrate unless the magistrate issued the warrant; or

(b) state on a form of warrant under section 409A or 416 a matter that, to the person's knowledge, departs in a material particular from the form authorised by the magistrate; or

(c) purport to execute, or present to another person, a document that purports to be a form of warrant under section 409A or 416 that the person knows:

(i) has not been approved by a magistrate under that section; or

(ii) departs in a material particular from the terms authorised by a magistrate under that section; or

(d) give to a magistrate a form of warrant under section 409A or 416 that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

438 Retention of things seized under Division 4 or 6

(1) This section applies to a thing that is seized under Division 4 or 6.

(2) The thing may be retained until:

(a) the reason for the seizure of the thing no longer exists; or

(b) it is decided that the thing is not to be used in evidence;

whichever happens first.

(3) As soon as practicable after the end of the period during which the thing may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

(4) Subsection (3) does not apply if:

(a) the thing is forfeited or forfeitable to the Commonwealth; or

(b) the thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the

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Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or

(c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

440 Law relating to legal professional privilege not affected

This Part does not affect the law relating to legal professional privilege.

441 Other laws about search, arrest etc. not affected

(1) This Part is not intended to limit or exclude the operation of another law of the Commonwealth relating to:

(a) the search of persons or premises; or

(b) arrest and related matters; or

(c) the stopping, detaining or searching of aircraft, vehicles or vessels; or

(d) the seizure of things.

(2) To avoid doubt, it is declared that even though another law of the Commonwealth provides power to do one or more of the things referred to in subsection (1), a similar power conferred by this Part may be used despite the existence of the power under the other law.

442 Persons to assist authorised officers

(1) Subject to subsection (5), the owner, or person in charge:

(a) of any vehicle, vessel, aircraft or platform boarded by an authorised officer under section 403; or

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(b) of any premises entered by an authorised officer under section 405;

must, if requested by an authorised officer to do so, provide reasonable assistance to the authorised officer in the performance of the functions, or carrying out of the duties, or the exercise of the powers, conferred on the authorised officer under this Act.

(2) A person must not contravene subsection (1).

Penalty: Imprisonment for 12 months.

(3) Subject to subsection (5), the owner, or the person in charge, of:

(a) premises entered under a warrant; or

(b) an aircraft, vehicle or vessel stopped under section 403;

must, if requested by an authorised officer to do so, provide reasonable assistance to the authorised officer in the performance of the functions, or carrying out of the duties, or the exercise of the powers, conferred on the authorised officer under this Act.

(4) A person must not contravene subsection (3).

Penalty: Imprisonment for 12 months.

(5) Where an authorised officer (subject to subsection (6)) makes a request of a person under this section, the authorised officer must:

(a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; or

(aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or

(b) in any other case—produce his or her identity card for inspection by that person;

and, if the authorised officer fails to do so, that person is not obliged to comply with the request.

(6) Subsection (5) does not apply to an authorised officer if:

(a) the authorised officer is a member of a police force or an officer of Customs; and

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(b) the officer is in uniform.

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Division 8—Power to search goods, baggage etc.

443 Power to search goods, baggage etc.

(1) This section applies to any goods that are to be, are being, or have been, taken on or off a ship that voyages, or an aircraft that flies, between:

(a) a place in Australia and a place outside Australia; or

(b) a place in an external Territory and a place outside that Territory.

(2) If an authorised officer believes, on reasonable grounds that goods are goods to which this section applies, he or she may:

(a) examine the goods; or

(b) if the goods are baggage—open and search the baggage; or

(c) if the goods are in a container—open and search the container.

(3) An authorised officer may ask a person who owns, is carrying or is otherwise associated with, or appears to the authorised officer to be associated with, goods to which this section applies any question in respect of the goods.

(4) A person must not refuse or fail to answer a question put to the person under subsection (3).

Penalty: 60 penalty units.

(5) In this Act:

baggage includes any parcel or other goods that:

(a) a passenger; or

(b) the master, a mate, an engineer or any other member of the crew of a ship; or

(c) the pilot or any other member of the crew of an aircraft;

has had with him or her on the ship or aircraft.

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goods includes baggage.

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Division 8A—Power to ask questions about specimens

443A Authorised officer may ask questions about the nature or origin of specimens

When section applies

(1) This section applies if an authorised officer has reasonable grounds to suspect that:

(a) a specimen has been exported, or is proposed to be exported, in contravention of section 303CC or 303DD; or

(b) a specimen has been imported, or is proposed to be imported, in contravention of section 303CD or 303EK; or

(c) a person has in the person's possession a specimen, and that possession contravenes section 303GN.

Note: Sections 303CC, 303CD, 303DD, 303EK and 303GN are included in Part 13A, which deals with international movement of wildlife specimens.

Questions

(2) If the authorised officer has reasonable grounds to suspect that a person has information about the nature or origin of the specimen, the authorised officer may ask the person one or more questions about the nature or origin of the specimen.

(2A) The authorised officer may ask the questions:

(a) in any case—by asking them in the presence of the person; or

(b) if the authorised officer is not a member of a police force and is not an officer of Customs—by sending written questions to the person.

Answers to questions

(3) Subject to subsections (6) and (7), if a person is asked a question under subsection (2), the person must not intentionally refuse or

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intentionally fail to answer the question to the extent that the person is capable of doing so.

(4) A person who contravenes subsection (3) commits an offence punishable on conviction by a fine not exceeding 10 penalty units.

(5) In subsection (3), strict liability applies to the circumstance that the person was asked a question under subsection (2).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

No requirement to give incriminating answers

(6) If a person is asked a question under subsection (2), the person is not required to answer the question if the answer might tend to incriminate the person or expose the person to a penalty.

Identity cards etc.

(7) If a person is asked a question under subsection (2) by an authorised officer, the person is not required to answer the question unless:

(a) if the authorised officer is a member of a police force—the authorised officer produces, for inspection by the person, written evidence of the fact that the authorised officer is a member of that police force; or

(b) if the authorised officer is an officer of Customs—the authorised officer produces, for inspection by the person, written evidence of the fact that the authorised officer is an officer of Customs; or

(c) if the authorised officer is not a member of a police force and is not an officer of Customs:

(i) if the questions are asked in the presence of the person—the authorised officer produces the authorised officer's identity card for inspection by the person; or

(ii) if the questions are asked by sending written questions to the person—the authorised officer sends with the questions a copy of his or her instrument of appointment.

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Division 9—Power to ask for names and addresses

444 Authorised person may ask for person's name and address

(1) An authorised officer may ask an individual to tell the authorised officer the individual's name and address if the authorised officer has reasonable grounds to suspect that the individual has been involved in the commission of an offence against an environmental law.

(2) Subject to subsection (4), a person must not refuse or fail to comply with a request under subsection (1).

Penalty: 10 penalty units.

(3) A person commits an offence punishable upon conviction by a fine not exceeding 10 penalty units if the person:

(a) in purported compliance with a request under subsection (1), gives a name and address; and

(b) does so knowing the name or address is false or misleading.

(4) If an authorised officer makes a request of a person under subsection (1), the person is not required to comply with the request unless:

(a) if the authorised officer is a member of a police force—he or she produces, for inspection by the person, written evidence of the fact that he or she is a member of that police force; or

(aa) if the authorised officer is an officer of Customs—he or she produces, for inspection by the person, written evidence of the fact that he or she is an officer of Customs; or

(b) in any other case—the authorised officer produces his or her identity card for inspection by the person.

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Division 10—Seizure and forfeiture etc.

Subdivision AA—Seizure of specimens involved in a contravention of Part 13A

444A Seizure of specimens involved in a contravention of Part 13A

(1) An authorised officer may seize a specimen if he or she has reasonable grounds to suspect that the specimen has been used or otherwise involved in the commission of an offence against Part 13A.

Note: Part 13A deals with international movement of wildlife specimens.

(2) If a warrant has been issued under Division 4:

(a) if the warrant relates to premises—this section does not apply:

(i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or

(ii) to anything found during the course of such a search; and

(b) if the warrant relates to a person—this section does not apply:

(i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or vessel, under the warrant; or

(ii) to anything found during the course of such a search.

Note: Division 4 is about search warrants. The Division contains its own seizure powers (see paragraphs 417(1)(c), (d) and (e) and (2)(b), (c) and (d)).

444B Notice about seizure

(1) Subject to subsection (2), if a specimen is seized by an authorised officer under section 444A, the authorised officer must give:

(a) the owner of the specimen; or

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(b) the person who had possession, custody or control of the specimen immediately before it was seized;

a written notice:

(c) identifying the specimen; and

(d) stating that it has been seized under section 444A and giving the reason for the seizure; and

(e) setting out the terms of sections 444C and 444D.

The notice must be given as soon as practicable after the seizure.

(2) An authorised officer is not required to give a notice under subsection (1) about a specimen if, after making such inquiries as the authorised officer thinks appropriate, the authorised officer does not, within 30 days after the seizure, have sufficient information to enable the authorised officer to give the notice. In that event, the authorised officer must keep a written record of the seizure.

444C Applications for return of specimen

(1) If a specimen is seized under section 444A, the owner of the specimen may apply in writing to the Secretary for the delivery to the owner of the specimen.

(2) The application must be made:

(a) within 30 days after the seizure; or

(b) if a notice is given under subsection 444B(1) in relation to the specimen—within 30 days after the giving of the notice.

(3) The application must be made on the ground that the specimen was not used or otherwise involved in the commission of an offence against Part 13A.

(4) If the applicant satisfies the Secretary that the ground has been established, the Secretary must grant the application.

Note: Under section 444G, the Secretary may retain the specimen for up to 30 days after making a decision on the application.

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444D Court action for return of specimen

(1) If a specimen is seized under section 444A, the owner of the specimen may bring an action against the Commonwealth in a court of competent jurisdiction for the delivery of the specimen to the owner on the ground that the specimen was not used or otherwise involved in the commission of an offence against Part 13A.

(2) An action under subsection (1) must be brought:
  (a) within 30 days after the seizure; or
  (b) if a notice is given under subsection 444B(1) in relation to the specimen—within 30 days after the giving of the notice.

(3) If:
  (a) an action is brought under subsection (1); and
  (b) the court finds that the specimen was used or otherwise involved in the commission of the offence concerned;

the court must order the specimen to be forfeited to the Commonwealth.

(4) If:
  (a) an action is brought under subsection (1); and
  (b) the action is discontinued by the owner otherwise than because of:
    (i) the delivery of the specimen to the owner; or
    (ii) the forfeiture of the specimen to the Commonwealth; or
    (iii) the disposal of the specimen under section 449;

the specimen is forfeited to the Commonwealth.

444E Consignment of specimen with consent of owner

(1) If:
  (a) a specimen is seized under section 444A; and
  (b) the specimen was imported from a particular foreign country; and

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(c) the export of the specimen from the foreign country was not in contravention of a law of the foreign country that corresponds to Part 13A; and

(d) if the importer had applied for a permit authorising the import of the specimen, there is no reasonable likelihood that the permit would have been granted; and

(e) the importer produces written evidence from the relevant CITES authority of the foreign country that the specimen may be returned to the foreign country without contravening such a law;

the Secretary may, with the consent of the owner of the specimen, consign the specimen to a place in the foreign country.

(2) The consignment is to be at the expense of the owner of the specimen.

444G Retention of specimen

(1) If a specimen is seized under section 444A, the specimen may be retained until the end of 30 days after whichever is the latest of the following events:

(a) the seizure;

(b) if a notice is given under subsection 444B(1) in relation to the specimen—the giving of the notice;

(c) if an application is made under subsection 444C(1) in relation to the specimen—the making of a decision on that application;

(d) if:

(i) proceedings for an offence against Part 13A are instituted during the period within which an application may be made under subsection 444C(1) in relation to the specimen; and

(ii) the specimen may have been used or otherwise involved in the commission of the offence or the specimen may afford evidence of the commission of the offence;

the termination of the proceedings (including any appeal to a court in relation to those proceedings).

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(2) The rule in subsection (1) does not authorise the retention of the specimen if the owner of the specimen succeeds in an action under subsection 444D(1) for the delivery of the specimen to the owner.

(3) As soon as practicable after the end of the period during which the specimen may be retained under subsection (1), the Secretary must cause reasonable steps to be taken to return the specimen to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

(4) Subsection (3) does not apply if:
  (a) the specimen is forfeited or forfeitable to the Commonwealth; or
  (b) the specimen has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the specimen; or
  (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the specimen; or
  (d) proceedings under subsection 444D(1) relating to the specimen are pending.

444H Forfeiture of specimen after end of retention period

(1) If:
  (a) a specimen is seized under section 444A; and
  (b) none of the following happens before the end of the period for which the specimen may be retained:
    (i) proceedings are instituted for an offence against Part 13A, where the specimen is alleged to have been used or otherwise involved in the commission of the offence;
    (ii) the specimen is released unconditionally to a person under section 449BA;

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(iia) the specimen is delivered to a person under section 444C;

(iii) the owner of the specimen brings an action under subsection 444D(1) for the delivery of the specimen to the owner;

(iv) proceedings are instituted under section 450A in relation to the specimen;

(v) the specimen is disposed of under section 449;

the specimen is forfeited to the Commonwealth at the end of that period.

(2) Subsection (1) has effect only to the extent (if any) to which it gives effect to paragraph 1(b) of Article VIII of CITES.

Subdivision AB—Seizure of things (other than specimens involved in a contravention of Part 13A)

445 Seizure of things (other than specimens involved in a contravention of Part 13A)

(1) Subject to subsections (2) and (3), an authorised officer may seize a thing if he or she has reasonable grounds to suspect that it is evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.

(2) This section does not apply to a specimen that an authorised officer has reasonable grounds to suspect has been used or otherwise involved in the commission of an offence against Part 13A.

Note: Section 444A deals with the seizure of such specimens.

(3) If a warrant has been issued under Division 4:

(a) if the warrant relates to premises—this section does not apply:

(i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or

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(ii) to anything found during the course of such a search; and

(b) if the warrant relates to a person—this section does not apply:

(i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or vessel, under the warrant; or

(ii) to anything found during the course of such a search.

Note: Division 4 is about search warrants. The Division contains its own seizure powers (see paragraphs 417(1)(c), (d) and (e) and (2)(b), (c) and (d)).

(3A) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

(4) In this section:

thing includes a vehicle, vessel, aircraft, platform, document, organism and specimen.

446 Retention of things seized under this Subdivision

(1) This section applies to a thing that is seized under section 445.

(1A) The thing may be retained until:

(a) the reason for the seizure no longer exists; or

(b) it is decided that the thing is not to be used in evidence; or

(c) the end of the period of 60 days after the seizure, or, if that period has been extended under subsection (3), the end of the extended period;

whichever happens first.

(1B) As soon as practicable after the end of the period (the ***retention period***) during which the thing may be retained under subsection (1A), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

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(1C) Subsection (1B) does not apply if:

(a) the thing is forfeited or forfeitable to the Commonwealth; or

(b) a proceeding in respect of which the thing may afford evidence was commenced before the end of the retention period and has not been completed (including an appeal to a court in relation to that proceeding); or

(c) the thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or

(d) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

(2) An authorised officer may, before the end of the retention period, apply to a magistrate for an order permitting the retention of the thing for a further period.

(3) If, in relation to an application under subsection (2), the magistrate is satisfied, by information on oath or affirmation, that it is necessary for the thing to continue to be retained:

(a) for the purposes of an investigation as to whether an offence against an environmental law has been committed, or whether an environmental penalty provision has been contravened; or

(b) to enable evidence of an offence against an environmental law, or of a contravention of an environmental penalty provision, to be secured for the purposes of a proceeding against the person for such an offence or contravention;

the magistrate may order that the thing may continue to be retained for a period specified in the order. The maximum period of an individual extension must not be more than 30 days.

(3A) Before an authorised officer makes an application under subsection (2), he or she must:

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(a) take reasonable steps to discover who has an interest in the retention of the thing; and

(b) if it is practicable to do so, give notice in writing of the proposed application to each person whom the authorised officer believes to have an interest in the proposed application.

(4) Subsection (3) does not prevent a magistrate from granting 2 or more successive extensions under that subsection of the period during which the thing may be retained.

(5) A function of making an order conferred on a magistrate by subsection (3) is conferred on the magistrate in a personal capacity and not as a court or a member of a court.

(6) Without limiting the generality of subsection (5), an order made by a magistrate under subsection (3) has effect only by virtue of this Act and is not taken, by implication, to be made by a court.

(7) A magistrate performing a function of, or connected with, making an order under subsection (3) has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).

(8) The Governor-General may make arrangements with the Governor of a State, the Chief Minister for the Australian Capital Territory or the Administrator of the Northern Territory for the performance, by all or any of the persons who from time to time hold office as magistrates in that State or Territory, of the function of making orders under subsection (3).

Subdivision AC—Direction to deliver seizable items

447 Direction to deliver seizable items

(1) An authorised officer may direct a person to deliver to the officer, or to another person specified in the direction, a thing that the

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officer is authorised to seize under a warrant issued under Division 4 or under section 445.

(2) The direction must:
  (a) be in writing; and
  (b) be given to the person who is directed to deliver the thing, who must be:
    (i) if the thing is a vessel—the person in charge of the vessel, or the vessel's owner; or
    (ii) if the thing is an aircraft—the person in charge of the aircraft; or
    (iii) otherwise—the person in possession of the thing; and
  (c) specify the place at which the delivery is to occur; and
  (d) specify the period within which the delivery is to occur.

(3) A person must not fail to comply with a direction under this section.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

(4) This Part applies to a thing delivered in compliance with a direction under this section as if the thing had been seized under the warrant or section that authorised the officer to seize the thing.

(5) A direction made under subsection (1) is not a legislative instrument.

Subdivision B—Disposal of seized items

449 Immediate disposal of seized items

(1) If:
  (a) a thing is seized under this Part; and
  (b) the Secretary considers that it is reasonably likely that the retention of the thing would:
    (i) constitute a serious threat to the environment; or

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(ii) constitute a serious threat to the continued existence, in the wild, of a particular species of animal or of a particular species of plant; or

(iii) result in the introduction of an alien species that represents a threat to ecosystems, habitats or other species; or

(iv) constitute a danger to public health; or

(v) in the case of a live organism or specimen—constitute a significant threat to the health of the organism or specimen; or

(vi) in the case of a live animal—result in the animal suffering;

the Secretary may cause the thing to be dealt with in such manner as the Secretary considers appropriate (including the destruction of the thing).

(1A) If the Secretary causes a live animal to be destroyed under subsection (1), the Secretary must require the destruction to be carried out in a humane manner.

(2) Subject to subsection (3), if a thing is dealt with in accordance with subsection (1), the Secretary must give to:

(a) the owner of the thing; or

(b) the person who had possession, custody or control of the thing immediately before it was seized;

a written notice:

(c) identifying the thing; and

(d) stating that the thing has been seized under this Part and giving the reason for the seizure; and

(e) stating that the thing has been dealt with under subsection (1) and specifying the manner in which it has been so dealt with and the reason for doing so; and

(f) setting out the terms of subsection (4).

The notice must be given as soon as practicable after the thing is so dealt with.

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(3) The Secretary need not give a notice under subsection (2) about a thing if, after making such inquiries as the Secretary thinks appropriate, the Secretary does not, within 20 days after dealing with the thing, have sufficient information to enable the notice to be given.

(4) If a thing is dealt with in accordance with subsection (1), the owner of the thing may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the thing at the time it was so dealt with. The action must be brought on the ground that the thing was not used or otherwise involved in the commission of an offence against this Act or the regulations.

449A Disposal of seized items if Secretary cannot locate or identify person entitled etc.

(1) This section applies to a thing that is seized under this Part if:

(a) apart from this section, the thing is required to be returned or delivered to a person (or reasonable steps are required to be taken for the return or delivery to a person of the thing); and

(b) one or more of the following applies:

(i) the Secretary is satisfied that reasonable steps have been taken to locate or identify the person, but those steps have not succeeded;

(ii) the Secretary is satisfied that reasonable steps have been taken to return or deliver the thing to the person, but those steps have not succeeded;

(iii) the Secretary is otherwise satisfied that it is not practicable to return or deliver the thing to the person.

(2) The Secretary may dispose of the thing in such manner as the Secretary considers appropriate.

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Subdivision BA—Release of seized items to owner etc.

449BA Release of seized items to owner etc.

(1) If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either:

(a) unconditionally; or

(b) on such conditions as the Secretary thinks fit (including conditions about the giving of security for giving payment of its value if it is forfeited).

(2) A person commits an offence if:

(a) a thing is released to the person under subsection (1) subject to a condition; and

(b) the person engages in conduct; and

(c) the conduct contravenes the condition.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

(3) Absolute liability applies to paragraph (2)(a).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

449BB How this Part applies in relation to things released conditionally

(1) This section applies if a thing, or anything in, on or attached to a thing, seized under this Part is released on conditions to a person under section 449BA. The provision of this Part under which the seizure was made is the ***seizure provision***, and the thing that is released is the ***released thing***.

(2) Subject to this section, the provisions of this Part that apply in relation to things seized under the seizure provision continue to apply to the released thing as if it had not been released.

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(3) A reference in a provision of this Part to the return or delivery of the released thing to a person is, if the person is the person to whom the thing has been released, taken to be a reference to making the release of the thing to the person unconditional.

(4) The regulations may specify modifications of provisions of this Part that are to have effect in relation to things to which this section applies. However, regulations must not:

(a) increase, or have the effect of increasing, the maximum penalty for any offence; or

(b) widen, or have the effect of widening, the scope of any offence.

Subdivision C—Forfeiture of seized items

450 Court-ordered forfeiture: order by court dealing with offence proceedings

(1) If a court convicts a person of an offence against an environmental law, the court may order the forfeiture to the Commonwealth of any thing used or otherwise involved in the commission of the offence.

(1A) If a court convicts a person of an offence against Part 13A, the court must order the forfeiture to the Commonwealth of any specimen used or otherwise involved in the commission of the offence.

Note: Part 13A deals with the international movement of wildlife specimens.

(2) A court may make an order under subsection (1) or (1A) even if the thing or specimen has been seized under this Act or taken into possession under section 406AA or Schedule 1.

(3) If:

(a) a specimen is seized under this Part; and

(b) either:

(i) a court finds a person not guilty of an offence against an environmental law in relation to the specimen; or

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(ii) a proceeding in a court for such an offence in relation to the specimen is discontinued or dismissed; and

(c) the court is satisfied that there are reasonable grounds for suspecting that, if the specimen were released to the person from whom it was seized or to its owner, the possession of the specimen by that person would contravene a provision of an environmental law;

the court may order the forfeiture to the Commonwealth of the specimen.

(4) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

450A Court-ordered forfeiture: other situations

(1) A court may, on the application of the Secretary, order the forfeiture to the Commonwealth of a thing that is seized under this Part if the court is satisfied that the thing has been used or otherwise involved in the commission of an offence against an environmental law.

(2) Without limiting subsection (1), a court may, on the application of the Secretary, order the forfeiture to the Commonwealth of a specimen if:

(a) the specimen was seized under this Part; and

(b) either:

(i) a court has found a person not guilty of an offence against an environmental law in relation to the specimen; or

(ii) a proceeding in a court for such an offence in relation to the specimen has been discontinued or dismissed; and

(c) the court to which the Secretary applies is satisfied that there are reasonable grounds for suspecting that, if the specimen were released to the person from whom it was seized or to its owner, the possession of the specimen by that person would contravene a provision of an environmental law.

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(3) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

450B Forfeiture of seized items by consent etc.

(1) If:

(a) a thing is seized under this Part; and

(b) the owner of the thing agrees to transfer ownership of the thing to the Commonwealth, either:

(i) unconditionally; or

(ii) in the event that a future contingency happens; and

(c) if subparagraph (b)(ii) applies—that contingency happens;

then:

(d) the thing becomes the property of the Commonwealth; and

(e) the provisions of this Part relating to forfeiture apply as if the thing had been forfeited to the Commonwealth under this Act.

(2) If:

(a) a thing is seized under this Part; and

(b) the owner of the thing agrees to transfer ownership of the thing to the Commonwealth in the event that a future contingency happens;

the Secretary may retain the thing:

(c) until the thing becomes the property of the Commonwealth; or

(d) if the thing does not become the property of the Commonwealth—until the end of the last day on which that contingency could happen.

(3) Subsection (2) has effect despite anything in section 438, 444G, 446, 456AB or 456AC.

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451 Dealings in forfeited items

(1) A thing forfeited to the Commonwealth under this Act becomes the property of the Commonwealth.

(2) A thing forfeited to the Commonwealth under this Act is to be dealt with in such manner as the Secretary considers appropriate.

(3) Without limiting subsection (2), the Secretary may sell a thing forfeited to the Commonwealth under this Act.

(4) The Secretary must not sell a specimen forfeited to the Commonwealth under this Act unless, in the opinion of the Secretary, the buyer will use the specimen for scientific or educational purposes.

452 Delivery of forfeited items to the Commonwealth

(1) If:

(a) a thing is forfeited to the Commonwealth under this Act; and

(b) the thing has not been dealt with under section 451; and

(c) the thing is in the possession, custody or control of a person other than:

(i) the Commonwealth; or

(ii) an agency of the Commonwealth; and

(d) the Secretary requests the person to deliver the thing to the Secretary;

the person must deliver the thing to the Secretary.

(2) A person must not contravene subsection (1).

Penalty: Imprisonment for 2 years.

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Subdivision F—Keeping of organisms or specimens that have been seized

453 Keeping of organisms or specimens retained under this Part

If a person is authorised under this Part to retain an organism or specimen, the person may do so by causing the organism or specimen to be taken to, and kept at, a place approved by the Secretary for the purpose of keeping organisms or specimens seized under this Division.

454 Recovery of costs of storing or keeping organisms or specimens

(1) If an organism or specimen is seized under this Division, the owner is liable to pay to the Commonwealth an amount equal to the sum of the following costs:

(a) reasonable costs incurred by the Commonwealth in relation to the custody of the organism or specimen;

(b) reasonable costs incurred by the Commonwealth in transporting the organism or specimen;

(c) reasonable costs incurred by the Commonwealth in maintaining the organism or specimen.

(2) If:

(a) an organism or specimen is seized under this Division; and

(b) the organism or specimen is disposed of;

the owner is liable to pay to the Commonwealth an amount equal to the reasonable costs incurred by the Commonwealth in disposing of the organism or specimen.

(3) An amount payable by a person under this section is a debt due by the person to the Commonwealth.

(4) An amount payable by a person to the Commonwealth under this section may be recovered by action in a court of competent jurisdiction.

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(5) The Secretary may remit an amount payable by a person under this section.

(6) In addition to its effect apart from this subsection, this section also has the effect it would have if a liability under this section were, by express provision, confined to the case of an organism or specimen that:

(a) is forfeited to the Commonwealth under this Act; or

(b) would have been forfeited to the Commonwealth under this Act if it had not been disposed of.

Subdivision G—Rescuing things

455 Rescuing things

A person commits an offence punishable upon conviction by imprisonment for a term not exceeding 2 years if:

(a) the person rescues any thing; and

(b) the thing has been, or is about to be, seized under this Act.

456 Breaking or destroying things or documents to prevent seizure etc.

A person must not:

(a) stave, break or destroy any thing in order to prevent the seizure of a thing, the securing of a thing, or the proof of any offence under an environmental law; or

(b) destroy any documents relating to any thing in order to prevent the seizure of a thing, the securing of a thing, or the proof of any offence under an environmental law.

Penalty: Imprisonment for 2 years.

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Subdivision H—Seizure of cages or containers

456AA Power to seize cages or containers containing seizable things

(1) This section applies if:

(a) an authorised officer has power to seize a thing (a ***seizable thing***) under another provision of this Part; and

(b) the seizable thing is in a cage or container; and

(c) the authorised officer considers that it is not reasonably practicable to seize the seizable thing without also seizing the cage or container.

(2) For the purpose of seizing the seizable thing and despite any other provision of this Part, the authorised officer may seize the cage or container containing the seizable thing (whether or not the cage or container also contains any other thing).

(3) The seizure of the seizable thing is taken to occur under the provision mentioned in paragraph (1)(a) (not under this section).

Note: The provisions governing the retention and return of the seizable thing are therefore the provisions that usually govern the seizure of a thing under the provision mentioned in paragraph (1)(a).

(4) If:

(a) an authorised officer seizes a cage or container; and

(b) the seizure of the cage or container is authorised by this section, and is also authorised by another provision of this Part;

then the seizure is taken be under this section, rather than under that other provision (subject to subsection 456AB(5)).

456AB Retention of seized cage or container

(1) This section applies to a cage or container that is seized under section 456AA because it contains a seizable thing.

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(2) The cage or container may be retained for so long as an authorised officer considers that it is reasonably necessary to retain it for the purpose of housing the seizable thing.

(3) As soon as practicable after the end of the period during which the cage or container may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the cage or container to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

(4) Subsection (3) does not apply if:
  (a) the seizure was also authorised by another provision of this Part (the ***other seizure provision***), as mentioned in subsection 456AA(4)); or
  (b) the cage or container is forfeited or forfeitable to the Commonwealth; or
  (c) the cage or container has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the cage or container; or
  (d) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the cage or container.

(5) If, because of paragraph (4)(a), the cage or container does not have to be returned at the end of the period referred to in subsection (3), this Part then applies in relation to the cage or container as if, at the end of that period, it had been seized under the other seizure provision.

456AC Retention of non-seizable things contained in seized cages or containers

(1) This section applies if:
  (a) a cage or container is seized under section 456AA because it contains a seizable thing; and

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(b) the cage or container also contains a thing (a ***non-seizable thing***) that is not a seizable thing.

(2) The non-seizable thing may be retained until it is reasonably practicable to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

(3) As soon as practicable after the end of the period during which the non-seizable thing may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

(4) Subsection (3) does not apply if:

(a) the non-seizable thing is forfeited or forfeitable to the Commonwealth; or

(b) the non-seizable thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or

(c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the non-seizable thing.

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Division 12—Environmental audits

458 Directed environmental audits

(1) The Minister may, by written notice given to the holder of an environmental authority, require the holder to carry out an environmental audit if the Minister believes or suspects on reasonable grounds:

(a) that the holder has contravened, or is likely to contravene, a condition of the authority; or

(b) the impacts that the action authorised by the authority has, has had or is likely to have on the matter dealt with by the provision for which the authority authorises the action are significantly greater than was indicated in the information available to the Minister when the authority was granted.

(2) The notice must specify:

(a) the matters to be covered by the audit; and

(b) the form of the audit report and the kinds of particulars it is to contain; and

(c) the date on or before which the report must be given to the Minister.

(3) Without limiting the matters that may be specified under paragraph (2)(a), those matters may include all or any of the following:

(a) an evaluation of the nature of the environment that is or will be affected by the holder's activities; and

(b) an assessment of the risks to the environment resulting from the activities; and

(c) an assessment of the holder's existing capacity to comply with the authority and the requirements of this Act and the regulations in carrying on the activities; and

(d) an assessment of what the holder will need to do, or continue to do, so to comply.

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(4) For the purposes of this Act, an ***environmental authority*** is:
  (a) an approval under Part 9; or
  (b) a permit issued under Chapter 5.

459 Appointment of auditor and carrying out of audit

(1) If the Minister gives the holder of an environmental authority a notice under section 458, the holder must appoint an environmental auditor and arrange for the auditor to carry out an environmental audit in accordance with the notice.

(2) The holder of an environmental authority must not contravene subsection (1).

  Civil penalty: 500 penalty units.

(3) The holder must not appoint an officer or employee of the holder to be an environmental auditor.

(4) The holder must not appoint a person to be an environmental auditor unless the Minister has approved the person for such appointment before the appointment is made.

(5) An appointment of a person as an environmental auditor made otherwise than in accordance with subsections (3) and (4) has no effect.

460 Nature of directed environmental audit

(1) If:
  (a) an environmental auditor carries out a directed environmental audit; and
  (b) in the course of carrying out the audit, the auditor does not deal with a particular matter; and
  (c) the matter is specified in the Minister's notice under section 458 as a matter that is to be covered by the audit;

the auditor commits an offence, punishable on conviction by a fine not exceeding 30 penalty units.

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Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibilities.

(2) If:

(a) an environmental auditor carries out a directed environmental audit; and

(b) in the course of carrying out the audit, the auditor conceals, or does not take into account, any information or document; and

(c) the information or document is relevant to the audit;

the auditor commits an offence punishable on conviction by imprisonment for not more than 6 months.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(2) of the *Crimes Act 1914* lets a court that convicts an individual of an offence impose a fine instead of, or as well as, imprisonment. The maximum fine (in penalty units) the court can impose is 5 times the maximum term of imprisonment (in months).

(3) In carrying out a directed environmental audit, the environmental auditor may, if:

(a) an environmental audit (including an environmental audit carried out in accordance with a condition of the relevant authority) was completed within the last preceding 2 years; and

(b) the auditor is satisfied that the previous audit is still relevant;

have regard to the results of the previous audit.

(4) For the purposes of this Act, a ***directed environmental audit*** is an audit required by a notice under section 458.

461 Audit reports

(1) After completing a directed environmental audit, the environmental auditor must prepare, and give the holder of the relevant environmental authority, a written report setting out the results of the audit.

(2) The holder must give the report to the Minister:

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(a) on or before the date specified by the Minister under paragraph 458(2)(c); or

(b) on or before such later date as the Minister, on application by the holder, determines.

(3) If the holder fails to comply with subsection (2), the holder commits an offence, punishable on conviction by a fine not exceeding 50 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibilities.

(4) If:

(a) the environmental auditor includes a statement in the report; and

(b) the statement is false or misleading in a material particular;

the auditor commits an offence punishable on conviction by imprisonment for not more than 6 months.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(2) of the *Crimes Act 1914* lets a court that convicts an individual of an offence impose a fine instead of, or as well as, imprisonment. The maximum fine (in penalty units) the court can impose is 5 times the maximum term of imprisonment (in months).

462 Directed environmental audits do not affect other audit obligations

This Division does not affect any obligation of a holder of an environmental authority to carry out an environmental audit in accordance with a condition of the authority.

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Division 13—Conservation orders

Subdivision A—Simplified outline

463 Simplified outline of this Division

The following is a simplified outline of this Division:

> The Minister may make conservation orders controlling activities, and requiring specified people to take specified actions, in Commonwealth areas to protect listed threatened species or ecological communities.
>
> A person who contravenes a conservation order commits an offence.
>
> Before the Minister makes a conservation order, he or she must consult various Commonwealth agencies.
>
> The Secretary must publicise conservation orders, and may give assistance to a person to comply with a conservation order.

Subdivision B—Making and reviewing conservation orders

464 Minister may make conservation orders

Making conservation orders

(1) The Minister may make a written order (a ***conservation order***):
  (a) prohibiting or restricting specified activities on or in:
    (i) all Commonwealth areas; or
    (ii) specified Commonwealth areas; or
  (b) requiring specified persons to take specified action on or in:
    (i) all Commonwealth areas; or
    (ii) specified Commonwealth areas.

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Note: Section 470 makes contravening a conservation order an offence.

Prerequisite to making conservation order

(2) The Minister may only make a conservation order if he or she reasonably believes that it is necessary to make the order to protect a listed threatened species or a listed threatened ecological community.

Minister must consider economic and social matters

(3) In considering whether to make a conservation order, the Minister must be satisfied that making the order is justified, having regard to economic and social considerations that are consistent with the principles of ecologically sustainable development.

Minister must consult before making conservation order

(4) Before making a conservation order, the Minister:
  (a) must seek the Secretary's advice on whether it should be made; and
  (b) must consult each Commonwealth agency that may be affected by the order, and any other Commonwealth agency the Minister thinks appropriate, unless delay in making the order would result in significant, irreparable damage to a listed threatened species or listed threatened ecological community.

465 Duration of conservation orders

(1) A conservation order comes into force:
  (a) if a commencement day is specified in the order—on that day; or
  (b) otherwise—immediately after it is made.

(2) The order remains in force:
  (a) for the period (if any) specified in the order; or
  (b) until it is revoked by the Minister.

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466 Reviews of conservation orders

(1) The Minister must:

(a) at intervals of not more than 5 years, review the conservation order; and

(b) after each review, confirm, vary or revoke the order by instrument in writing.

(2) Before reviewing the order, the Minister must seek the Secretary's advice on the review.

(3) The Minister must not revoke the order unless he or she is satisfied that the order is no longer needed to protect the listed threatened species or listed threatened ecological community the order was made to protect.

(4) The Minister must not vary the order unless he or she is satisfied that the order as varied adequately protects the listed threatened species or listed threatened ecological community the order was first made to protect.

(5) Immediately after a variation of the order, the order continues in force as so varied.

467 Publication of conservation orders

(1) As soon as practicable after making or reviewing a conservation order, the Minister must cause the Secretary to be informed of the making of the order, or the decision on the review, as the case requires.

(2) The Secretary must, as soon as practicable after being so informed:

(a) cause to be published in the *Gazette,* in a daily newspaper circulating in each State or self-governing Territory in which are located Commonwealth areas to which the order relates and in any other way required by the regulations, a notice containing:

(i) a copy of the order; and

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(ii) a statement to the effect that contravention of the order is an offence against this Act; and

(iii) if applicable, a statement of the decision on the review; and

(iv) a statement to the effect that a person affected by the order may apply to the Minister, within 28 days of the publication (or within such further period as the Minister allows), for a reconsideration of the order by the Minister; and

(b) take all reasonable steps to ensure that each person who the Secretary knows would be affected by the order is given a notice containing:

(i) a copy of the order; and

(ii) if applicable, a statement of the decision on the review; and

(iii) unless the person is a Commonwealth agency or an agency of a State or self-governing Territory—a statement to the effect that contravention of the order is an offence against this Act; and

(iv) a statement to the effect that the person may apply to the Minister, within 28 days of being given the notice (or within such further period as the Minister allows), for a reconsideration of the order by the Minister.

(3) Failure to comply with this section does not affect the validity of the order.

468 Application for reconsideration of conservation orders or decisions on review

(1) A person affected by a conservation order, or by the decision on a review of a conservation order, may apply to the Minister to reconsider the order or the decision, as the case requires.

(2) The application must be in writing.

(3) Subject to subsection (4), the application must be made within 28 days, or within such further period as the Minister allows, after the

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publication under paragraph 467(2)(a) of the notice relating to the making of the order or conduct of the review.

(4) If the person is given a copy of the order after that publication, the period of 28 days within which that person must make the application is taken to commence on the day on which the person received the notice.

469 Reconsideration of conservation orders and decisions on review

(1) Upon receiving the application, the Minister must:
  (a) seek the Secretary's advice on the application; and
  (b) reconsider the conservation order or the decision on review, as the case requires; and
  (c) by written instrument:
    (i) confirm, vary or revoke the order; or
    (ii) confirm or vary the decision on review; and
  (d) cause the Secretary to be informed accordingly.

(2) As soon as practicable after being so informed, the Secretary must:
  (a) notify the applicant in writing of the result of the reconsideration; and
  (b) if the order is revoked or varied or the decision on review is varied—cause to be published in the *Gazette*, and in any other way required by the regulations, a notice:
    (i) stating that fact; and
    (ii) in the case of a variation—setting out a copy of the order or decision as so varied.

(3) Immediately after a variation of the order, the order continues in effect as so varied.

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Subdivision C—Complying with conservation orders

470 Contravening conservation orders is an offence

(1) A person must not take an action reckless as to whether the action contravenes a conservation order.

Penalty: 500 penalty units.

(2) If a person believes that taking an action that he or she proposes to take may contravene a particular conservation order, the person may seek the Minister's advice under subsection 471(3) on whether the order would be contravened by taking that action.

(3) The person does not contravene the order if he or she acts in accordance with advice given to him or her under subsection 471(3) to the effect that the order would not be contravened.

471 Minister to consider proposed actions etc.

(1) This section applies to a proposed action if it is referred to the Minister under section 470 for the Minister's advice on whether it would contravene a conservation order.

(2) A person who proposes to take the action may make written submissions to the Minister about the proposed action.

(3) The Minister must:

(a) refer the proposed action, together with any submissions received by the Minister about the proposed action, to the Secretary; and

(b) after considering the Secretary's advice on the matter, give the person who sought the Minister's advice under section 470 a written notice of the minister's advice on the proposed action.

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472 Contents of notices of advice

(1) The notice of advice must state whether the Minister thinks that the proposed action would contravene a conservation order.

(2) If the decision to give the advice was not made personally by the Minister and the notice of advice is given to a person who is not a Commonwealth agency, the notice must include:

(a) a statement to the effect that, if the person is dissatisfied with the decision to give that advice, application may, subject to the *Administrative Review Tribunal Act 2024*, be made to the Administrative Review Tribunal for review of the decision; and

(b) a statement to the effect that the person may request a statement under that Act in relation to the decision.

473 Review by the Administrative Review Tribunal

(1) Subject to subsections (1A) and (2), applications may be made to the Administrative Review Tribunal for review of the decision to give the advice.

(1A) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

(2) Despite sections 17 and 35 of the *Administrative Review Tribunal Act 2024*, applications are not to be made by or on behalf of Commonwealth agencies.

474 Assistance in complying with conservation orders

(1) On behalf of the Commonwealth, the Secretary may provide assistance to a person (other than a Commonwealth agency) to comply with prohibitions, restrictions or requirements imposed on a person by a conservation order.

(2) The assistance may take any one or more of the following forms:

(a) payment of money;

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(b) provision of goods;
(c) provision of labour;
(d) provision of other services.

(3) The value of the assistance must not exceed that which the Secretary thinks are the reasonable and direct costs of complying with the prohibitions, restrictions or requirements in question.

(4) Assistance given under this section must be taken into account in determining compensation payable under section 519.

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Division 14—Injunctions

475 Injunctions for contravention of the Act

Applications for injunctions

(1) If a person has engaged, engages or proposes to engage in conduct consisting of an act or omission that constitutes an offence or other contravention of this Act or the regulations:
   (a) the Minister; or
   (b) an interested person (other than an unincorporated organisation); or
   (c) a person acting on behalf of an unincorporated organisation that is an interested person;

may apply to the Federal Court for an injunction.

Prohibitory injunctions

(2) If a person has engaged, is engaging or is proposing to engage in conduct constituting an offence or other contravention of this Act or the regulations, the Court may grant an injunction restraining the person from engaging in the conduct.

Additional orders with prohibitory injunctions

(3) If the court grants an injunction restraining a person from engaging in conduct and in the Court's opinion it is desirable to do so, the Court may make an order requiring the person to do something (including repair or mitigate damage to the environment).

Mandatory injunctions

(4) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act, and the refusal or failure did, does or would constitute an offence or other contravention of this Act or the regulations, the Court may grant an injunction requiring the person to do the act.

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Interim injunctions

(5) Before deciding an application for an injunction under this section, the Court may grant an interim injunction:
  (a) restraining a person from engaging in conduct; or
  (b) requiring a person to do an act.

Meaning of interested person—individuals

(6) For the purposes of an application for an injunction relating to conduct or proposed conduct, an individual is an ***interested person*** if the individual is an Australian citizen or ordinarily resident in Australia or an external Territory, and:
  (a) the individual's interests have been, are or would be affected by the conduct or proposed conduct; or
  (b) the individual engaged in a series of activities for protection or conservation of, or research into, the environment at any time in the 2 years immediately before:
    (i) the conduct; or
    (ii) in the case of proposed conduct—making the application for the injunction.

Meaning of interested person—organisations

(7) For the purposes of an application for an injunction relating to conduct or proposed conduct, an organisation (whether incorporated or not) is an ***interested person*** if it is incorporated (or was otherwise established) in Australia or an external Territory and one or more of the following conditions are met:
  (a) the organisation's interests have been, are or would be affected by the conduct or proposed conduct;
  (b) if the application relates to conduct—at any time during the 2 years immediately before the conduct:
    (i) the organisation's objects or purposes included the protection or conservation of, or research into, the environment; and

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(ii) the organisation engaged in a series of activities related to the protection or conservation of, or research into, the environment;

(c) if the application relates to proposed conduct—at any time during the 2 years immediately before the making of the application:

(i) the organisation's objects or purposes included the protection or conservation of, or research into, the environment; and

(ii) the organisation engaged in a series of activities related to the protection or conservation of, or research into, the environment.

476 Injunctions for contraventions of conservation agreements

Applications for injunctions

(1) If a person bound by a conservation agreement engages or proposes to engage in conduct consisting of an act or omission that constitutes a contravention of the agreement, another person bound by the agreement or the Minister may apply to the Federal Court for an injunction.

Note: Section 307 explains who is bound by a conservation agreement.

Prohibitory injunctions

(2) If a person has engaged, is engaging or is proposing to engage in conduct contravening the agreement, the Court may grant an injunction restraining the person from engaging in the conduct.

Additional orders with prohibitory injunctions

(3) If the court grants an injunction restraining a person from engaging in conduct and in the Court's opinion it is desirable to do so, the Court may make an order requiring the person to do something (including repair or mitigate damage to the environment).

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Mandatory injunctions

(4) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act, and the refusal or failure was, is or would be a contravention of the agreement, the Court may grant an injunction requiring the person to do the act.

Interim injunctions

(5) Before deciding an application for an injunction under this section the Court may grant an interim injunction:
  (a) restraining a person from engaging in conduct; or
  (b) requiring a person to do an act.

477 Discharge of injunctions

On application, the Federal Court may discharge or vary an injunction.

479 Certain considerations for granting injunctions not relevant

Prohibitory injunctions

(1) The Federal Court may grant an injunction restraining a person from engaging in conduct:
  (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  (b) whether or not the person has previously engaged in conduct of that kind; and
  (c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person engages, or continues to engage, in conduct of that kind.

Mandatory injunctions

(2) The Federal Court may grant an injunction requiring a person to do a particular act or thing:

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(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and

(b) whether or not the person has previously refused or failed to do the act or thing; and

(c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person refuses or fails, or continues to refuse or fail, to do the act or thing.

480 Powers conferred are in addition to other powers of the Court

The powers conferred on the Federal Court by this Division are in addition to (and do not limit) any other powers of the Court.

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Division 14A—Federal Court's power to make remediation orders

480A Remediation orders

(1) If, after the commencement of this section, a person has engaged, or is engaging, in conduct constituting an offence or other contravention of this Act or the regulations, the Federal Court may make an order (a ***remediation order***) requiring the person to take action (the ***remediation action***) to repair or mitigate damage that may or will be, or that has been, caused to the environment by the contravention.

(2) In considering whether to grant a remediation order, the matters to which the Federal Court may have regard include (but are not limited to) the following:

(a) the nature and extent of the contravention;

(b) the nature and extent of the damage to the environment that may or will be, or that has been, caused by the contravention;

(c) the circumstances in which the contravention took place;

(d) whether the person has previously been found by a court in proceedings under this Act or the regulations to have engaged in any similar conduct;

(e) the cost to the person of taking the remediation action.

(3) The description in a remediation order of the remediation action may either be in general terms (for example, requiring the person to take whatever action is necessary to repair or mitigate the damage), or it may require the person to take particular action to repair or mitigate the damage.

(4) If the Federal Court makes a remediation order, it may also make an order requiring the person to provide security for the due taking of the remediation action.

(5) Application to the Federal Court for a remediation order may only be made by the Minister.

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480B Discharge of remediation orders

On application by the Minister, the Federal Court may discharge or vary a remediation order.

480C Powers conferred are in addition to other powers of the Court

The powers conferred on the Federal Court by this Division are in addition to (and do not limit) any other powers of the Court.

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Division 14B—Minister's power to make remediation determinations

Subdivision A—Making of remediation determinations

480D Minister may make remediation determination

(1) If:

(a) the Minister considers that an action taken by a person after the commencement of this section contravened a civil penalty provision of Part 3; and

(b) the Minister considers it desirable to make an order under this section in relation to the action;

the Minister may make a written determination (a ***remediation determination***) requiring the person to take action to repair or mitigate damage that may or will be, or that has been, caused by the contravention, to the matter protected by the provision of Part 3.

(2) The Minister cannot make a remediation determination at a time that is more than 6 years after the time when the person took the action referred to in paragraph (1)(a).

(3) A remediation determination is not a legislative instrument.

480E Contents of a remediation determination

(1) A remediation determination must specify the following:

(a) the person (the ***specified person***) referred to in paragraph 480D(1)(a);

(b) the action (the ***specified action***) referred to in that paragraph;

(c) the civil penalty provision (the ***specified civil penalty provision***) of Part 3 referred to in that paragraph;

(d) the action (the ***remediation action***) that the person is required to take.

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(2) A remediation determination may do all or any of the following in relation to some or all of the remediation action:

(a) require action to be taken in a specified place;

(b) require action to be taken at, or by, a specified time;

(c) require a specified industry standard or code of practice to be complied with in taking action;

(d) require the taking of reasonable steps to obtain any Commonwealth, State or Territory approval or authority needed to carry out action;

(e) require the preparation, and submission to the Minister for approval, of a plan for taking action, and require action to be taken in accordance with the plan as approved by the Minister;

(f) require the spending of a specified amount of money on the taking of action;

(g) require the payment to a specified person of a specified amount or money, for the purpose of activities directed towards the protection and conservation of the matter protected by the specified civil penalty provision;

(h) require the payment to the Commonwealth of a specified amount of money as security for the due taking of action;

(i) provide for monitoring, auditing, or reporting to the Minister, in relation to the taking of action.

(3) A remediation determination must contain a statement to the effect that the specified person may apply for a reconsideration of the determination under section 480J.

480F Notifying owners and occupiers of land of proposed remediation determination

(1) Before the Minister makes a remediation determination that requires action to be taken on land that is not owned or occupied by the person proposed to be specified in the order, the Minister must:

(a) take all practicable steps to identify each person who is an owner or occupier of all or part of the land; and

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(b) take all practicable steps to advise each person identified of the remediation determination that the Minister proposes to make; and

(c) give persons advised at least 20 business days to comment in writing to the Minister on the proposed remediation determination.

(2) The Minister must take the comments into account in deciding whether to make the proposed remediation determination.

480G Notifying that remediation determination has been made

As soon as practicable after a remediation determination is made, the Minister must:

(a) give the specified person a copy of the determination; and

(b) take all practicable steps to advise each person identified as mentioned in paragraph 480F(1)(a) of the making of the remediation determination.

480H Duration of remediation determinations

(1) A remediation determination comes into force:

(a) if a commencement day is specified in the determination (not being a day before paragraph 480G(a) is complied with)—on that day; or

(b) otherwise—when paragraph 480G(a) is complied with.

(2) The determination remains in force:

(a) for the period (if any) specified in the order; or

(b) until it is set aside by the Federal Court under Subdivision B or it is revoked by the Minister under Subdivision D.

480J Ministerial reconsideration of remediation determinations

(1) Within 20 days after receiving a copy of a remediation determination as required by paragraph 480G(a), the specified person may apply to the Minister for a reconsideration of the determination.

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(2) On receipt of an application for reconsideration of a remediation determination, the Minister may affirm, vary or set aside the determination.

(3) The Minister may take account of information and comments from any source the Minister considers appropriate in deciding what action to take in relation to an application under this section.

(4) The Minister must:
  (a) advise the specified person of the Minister's decision in relation to an application under this section; and
  (b) take all practicable steps to advise each person identified as mentioned in paragraph 480F(1)(a) of the Minister's decision in relation to an application under this section.

Subdivision B—Federal Court may set aside remediation determination

480K Applying to Federal Court to have remediation determination set aside

(1) Within 28 days after any of the following:
  (a) the specified person receives a copy of a remediation determination as required by paragraph 480G(a); or
  (b) a remediation determination is affirmed or varied under section 480J; or
  (c) a remediation determination is varied by the Minister under Subdivision D;

the specified person may apply to the Federal Court to have the remediation determination set aside.

(2) On an application under subsection (1), the Federal Court must set aside the remediation determination if the Court is satisfied that:
  (a) the specified action did not occur; or
  (b) the specified person did not take the specified action; or
  (c) the specified action was not a contravention of the specified civil penalty provision; or

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(d) the remediation action is not a reasonable measure to repair or mitigate damage that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision.

(3) In considering whether the remediation determination is a reasonable measure to repair or mitigate damage that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision, the Federal Court must have regard to the following:

(a) the nature and extent of the specified action;

(b) the nature and extent of the damage to the environment that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision;

(c) the circumstances in which the specified action took place;

(d) whether the specified person has previously been found by a court in proceedings under this Act or the regulations to have engaged in any similar conduct;

(e) the cost to the specified person of taking the remediation action.

The Federal Court may also have regard to any other matters it considers relevant.

(4) The Federal Court must not set aside the remediation determination unless it is satisfied as mentioned in subsection (2).

Subdivision C—Complying with remediation determinations

480L Federal Court may order compliance with remediation determination

(1) If the Minister considers that the specified person has contravened a remediation determination, the Minister may apply to the Federal Court for an order under subsection (2).

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(2) If the Federal Court is satisfied that the specified person has contravened a remediation determination, the Court may make one or more of the following orders:

(a) an order directing the specified person to comply with the remediation determination;

(b) any other order that the Court considers appropriate.

480M Civil penalty for contravention of remediation determination

(1) The specified person must not contravene a remediation determination.

(2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order the specified person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person to pay under that section for a contravention of the specified civil penalty provision.

Subdivision D—Variation or revocation of remediation determinations

480N Variation or revocation of remediation determination

(1) The Minister may, in writing, vary or revoke a remediation determination.

(2) Sections 480F and 480G apply in relation to the variation or revocation of a remediation determination in the same way as they apply in relation to the making of a remediation determination.

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Division 15—Civil penalties

Subdivision A—Obtaining an order for a civil penalty

481 Federal Court may order person to pay pecuniary penalty for contravening civil penalty provision

Application for order

(1) Within 6 years of a person (the ***wrongdoer***) contravening a civil penalty provision, the Minister may apply on behalf of the Commonwealth to the Federal Court for an order that the wrongdoer pay the Commonwealth a pecuniary penalty.

Court may order wrongdoer to pay pecuniary penalty

(2) If the Court is satisfied that the wrongdoer has contravened a civil penalty provision, the Court may order the wrongdoer to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate (but not more than the relevant amount specified for the provision).

Determining amount of pecuniary penalty

(3) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  (a) the nature and extent of the contravention; and
  (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  (c) the circumstances in which the contravention took place; and
  (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

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Conduct contravening more than one civil penalty provision

(4) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

482 What is a *civil penalty provision*?

A subsection of this Act (or a section of this Act that is not divided into subsections) is a ***civil penalty provision*** if:

(a) the words "civil penalty" and one or more amounts in penalty units are set out at the foot of the subsection (or section); or

(b) another provision of this Act specifies that the subsection (or section) is a civil penalty provision.

483 Contravening a civil penalty provision is not an offence

A contravention of a civil penalty provision is not an offence.

484 Persons involved in contravening civil penalty provision

(1) A person must not:

(a) aid, abet, counsel or procure a contravention of a civil penalty provision; or

(b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or

(c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or

(d) conspire to contravene a civil penalty provision.

(2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

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485 Recovery of a pecuniary penalty

If the Federal Court orders a person to pay a pecuniary penalty:

(a) the penalty is payable to the Commonwealth; and

(b) the Commonwealth may enforce the order as if it were a judgment of the Court.

Subdivision B—Civil penalty proceedings and criminal proceedings

486A Civil proceedings after criminal proceedings

The Federal Court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

486B Criminal proceedings during civil proceedings

(1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

486C Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

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486D Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

Subdivision C—Enforceable undertakings relating to contraventions of Part 3 civil penalty provisions

486DA Acceptance of undertakings relating to contraventions of Part 3 civil penalty provisions

(1) This section applies if the Minister considers that an action taken by a person after the commencement of this section contravened a civil penalty provision of Part 3.

(2) The Minister may accept a written undertaking given by the person in relation to the action, in which the person undertakes to pay a specified amount, within a specified period:

(a) to the Commonwealth; or

(b) to some other specified person, for the purpose of activities directed towards the protection and conservation of the matter protected by the civil penalty provision referred to in subsection (1).

(3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Minister.

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486DB Enforcement of undertakings

(1) If the Minister considers that a person who gave an undertaking under section 486DA has breached any of its terms, the Minister may apply to the Federal Court for an order under subsection (2).

(2) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Court may make one or more of the following orders:

(a) an order directing the person to comply with that term of the undertaking;

(b) any other order that the Court considers appropriate.

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Division 15A—Notices to produce or attend

486E Application of Division

(1) This Division applies if the Minister believes, on reasonable grounds, that a person is capable of giving information, or producing books, records or documents, that are relevant for the purposes of investigating or preventing:

(a) an offence against an environmental law; or

(b) a contravention of an environmental penalty provision.

(2) In this Division:

official means any of the following:

(a) the Minister;

(b) an officer or employee in the Department;

(c) the Director;

(d) the Chief Executive Officer of the Great Barrier Reef Marine Park Authority;

(e) a member of the staff of the Great Barrier Reef Marine Park Authority.

486F Minister may require person to provide information etc.

(1) The Minister may, by written notice, require the person to give to an official specified in the notice, in the manner and within the period specified in the notice:

(a) such information as is specified in the notice; or

(b) any book, record or document that is specified in the notice.

The period must end not less than 14 days after the notice is given.

(2) A notice under subsection (1) must set out the effect of section 491 of this Act and of sections 137.1 and 137.2 of the *Criminal Code*.

(3) A person commits an offence if:

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(a) the person is required to give information or a book, record or document to an official under subsection (1); and
(b) the person does not give the information, book, record or document to the official.

Penalty: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

486G Minister may require person to appear before Minister

(1) The Minister may, by written notice, require the person to appear before an official specified in the notice, at a time and place specified in the notice:
(a) to answer any questions put by the official; and
(b) to produce to the official such books, records or documents as are specified in the notice.

The time must not be earlier than 14 days after the notice is given.

(2) A notice under subsection (1) must set out the effect of section 491 of this Act and of sections 137.1 and 137.2 of the *Criminal Code*.

(3) A person commits an offence if:
(a) the person is required to appear before an official under subsection (1); and
(b) the person does not appear before the official.

Penalty: Imprisonment for 6 months.

(4) A person commits an offence if:
(a) the person is required to appear before an official under subsection (1); and
(b) when appearing before the official, the person does not:
(i) answer a question put by the official; or
(ii) produce a book, record or document to the official as required by the notice given under that subsection.

Penalty: Imprisonment for 6 months.

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Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

486H Persons to whom notices may not be given

A notice under subsection 486F(1) or 486G(1) must not be given to a person if the person is, or has been, a lawyer for:

(a) if the notice relates to the investigation or prevention of an offence against an environmental law—the person suspected of having committed the offence; or

(b) if the notice relates to the investigation or prevention of a contravention of an environmental penalty provision—the person suspected of having contravened the provision.

486J Self-incrimination

(1) An individual is not excused from giving information (including by answering a question), or from giving or producing a book, record or document, under this Division on the ground that the information, or the giving or production of the book, record or document, might tend to incriminate the individual or expose the individual to a penalty.

(2) However:

(a) the information given, or the book, record or document given or produced; or

(b) giving the information, or giving or producing the book record or document; or

(c) any information, document or thing obtained as a direct or indirect consequence of giving the information, or giving or producing the book, record or document;

is not admissible in evidence against the person:

(d) in any civil proceedings; or

(e) in any criminal proceedings other than:

(i) proceedings for an offence against subsection 486F(3) or 486G(3) or (4); or

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(ii) proceedings for an offence against section 491 that relates to a requirement under this Division; or

(iii) proceedings for an offence against section 137.1 or 137.2 (false or misleading information or documents) of the *Criminal Code* that relates to a requirement under this Division.

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Division 16—Review of administrative decisions

487 Extended standing for judicial review

(1) This section extends (and does not limit) the meaning of the term ***person aggrieved*** in the *Administrative Decisions (Judicial Review) Act 1977* for the purposes of the application of that Act in relation to:

(a) a decision made under this Act or the regulations; or

(b) a failure to make a decision under this Act or the regulations; or

(c) conduct engaged in for the purpose of making a decision under this Act or the regulations.

(2) An individual is taken to be a person aggrieved by the decision, failure or conduct if:

(a) the individual is an Australian citizen or ordinarily resident in Australia or an external Territory; and

(b) at any time in the 2 years immediately before the decision, failure or conduct, the individual has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment.

(3) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the decision, failure or conduct if:

(a) the organisation or association is incorporated, or was otherwise established, in Australia or an external Territory; and

(b) at any time in the 2 years immediately before the decision, failure or conduct, the organisation or association has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment; and

(c) at the time of the decision, failure or conduct, the objects or purposes of the organisation or association included

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protection or conservation of, or research into, the environment.

(4) A term (except ***person aggrieved***) used in this section and in the *Administrative Decisions (Judicial Review) Act 1977* has the same meaning in this section as it has in that Act.

488 Applications on behalf of unincorporated organisations

(1) A person acting on behalf of an unincorporated organisation that is a person aggrieved (for the purposes of the *Administrative Decisions (Judicial Review) Act 1977*) by:

(a) a decision made under this Act or the regulations; or

(b) a failure to make a decision under this Act or the regulations; or

(c) conduct engaged in for the purpose of making a decision under this Act or the regulations;

may apply under that Act for a review of the decision, failure or conduct.

(2) The *Administrative Decisions (Judicial Review) Act 1977* applies in relation to the person as if he or she were a person aggrieved.

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Division 17—Duty to provide accurate information

489 Providing false or misleading information to obtain approval or permit

(1) A person commits an offence if:

(a) the person provides information in response to a requirement or request under Part 7, 8, 9, 13 or 13A; and

(b) the person is reckless as to whether the information is false or misleading in a material particular.

Note: The fault element in paragraph (1)(b) can be demonstrated by proof of knowledge. See subsection 5.4(4) of the *Criminal Code*.

(2) An offence against subsection (1) is punishable on conviction by:

(a) imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both, if it is proved the person knew the information was false or misleading; or

(b) imprisonment for a term not more than 1 year, a fine not more than 60 penalty units, or both, if it is proved the person was reckless as to whether the information was false or misleading.

Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(2A) A person commits an offence if:

(a) the person provides information in response to a requirement or request under Part 7, 8, 9, 13 or 13A; and

(b) the person is negligent as to whether the information is false or misleading in a material particular.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2B) An offence against subsection (2A) is punishable on conviction by a fine not more than 30 penalty units.

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Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(3) Subsections (1) and (2A) do not apply to a requirement to provide information that is imposed by a condition attached to an environmental authority.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

490 Providing false or misleading information in response to a condition on an approval or permit

(1) A person commits an offence if:

(a) the person is the holder of an environmental authority; and

(b) a condition attached to the environmental authority requires the person to provide information; and

(c) the person provides information in response (or purportedly in response) to the requirement; and

(d) the person is reckless as to whether the information is false or misleading in a material particular.

Note: The fault element in paragraph (1)(d) can be demonstrated by proof of knowledge. See subsection 5.4(4) of the *Criminal Code*.

(2) The offence is punishable on conviction by:

(a) imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both, if it is proved the person knew the information was false or misleading; or

(b) imprisonment for a term not more than 1 year, a fine not more than 60 penalty units, or both, if it is proved the person was reckless as to whether the information was false or misleading.

Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

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491 Providing false or misleading information to authorised officer etc.

(1) A person commits an offence if the person:

(a) provides information or a document to another person (the ***recipient***); and

(b) knows the recipient is:

(i) an authorised officer; or

(ii) the Minister; or

(iii) an employee or officer in the Department; or

(iv) a commissioner;

performing a duty or carrying out a function under this Act or the regulations; and

(c) knows the information or document is false or misleading in a material particular.

(2) The offence is punishable on conviction by imprisonment for a term not more than 1 year, a fine not more than 60 penalty units, or both.

Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

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Division 18—Liability of executive officers for corporations

493 Who is an *executive officer* of a body corporate?

In this Act:

executive officer of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

494 Civil penalties for executive officers of bodies corporate

(1) If:

(a) a body corporate contravenes:

(i) a civil penalty provision of Part 3 (requirements for approval); or

(ii) section 142 (condition of approval); or

(iii) section 390SA (declared commercial fishing activity); and

(b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and

(c) the officer was in a position to influence the conduct of the body in relation to the contravention; and

(d) the officer failed to take all reasonable steps to prevent the contravention;

the officer contravenes this subsection.

(2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order an individual to pay for contravening the civil penalty provision contravened by the body corporate.

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495 Criminal liability of executive officers of bodies corporate

(1) If:

(a) a body corporate contravenes:

(i) section 489 (Providing false or misleading information to obtain approval or permit); or

(ii) section 490 (Providing false or misleading information in response to a condition on an approval or permit); or

(iii) section 491 (Providing false or misleading information to authorised officer etc.); and

(b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and

(c) the officer was in a position to influence the conduct of the body in relation to the contravention; and

(d) the officer failed to take all reasonable steps to prevent the contravention;

the officer commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(2) of the *Crimes Act 1914* lets a court that convicts an individual of an offence impose a fine instead of, or as well as, imprisonment. The maximum fine (in penalty units) the court can impose is 5 times the maximum term of imprisonment (in months).

(2) If:

(a) a body corporate contravenes:

(i) section 15A (Offences relating to declared World Heritage properties); or

(ia) section 15C (Offences relating to National Heritage places); or

(ii) section 17B (Offences relating to declared Ramsar wetlands); or

(iii) section 18A (Offences relating to threatened species etc.); or

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(iv) section 20A (Offences relating to listed migratory species); or

(v) section 22A (Offences relating to nuclear actions); or

(vi) section 24A (Offences relating to marine areas); or

(via) section 24E (Offences relating to water resources); or

(vii) section 27A (Offences relating to Commonwealth land); or

(viia) section 27C (Offences relating to Commonwealth heritage places overseas); or

(viii) section 142A (Offence of breaching conditions on approval); or

(ix) section 390SB (Offence relating to declared commercial fishing activity); and

(b) an executive officer of the body was reckless as to whether the contravention would occur; and

(c) the officer was in a position to influence the conduct of the body in relation to the contravention; and

(d) the officer failed to take all reasonable steps to prevent the contravention;

the officer commits an offence.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3) An offence against subsection (2) is punishable on conviction by imprisonment for a term not exceeding the term specified in the provision contravened by the body corporate.

Note: Subsection 4B(2) of the *Crimes Act 1914* lets a court that convicts an individual of an offence impose a fine instead of, or as well as, imprisonment. The maximum fine (in penalty units) the court can impose is 5 times the maximum term of imprisonment (in months).

496 Did an executive officer take reasonable steps to prevent contravention?

(1) For the purposes of sections 494 and 495, in determining whether an executive officer of a body corporate failed to take all

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reasonable steps to prevent the contravention, a court is to have regard to:

(a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):

(i) that the body arranges regular professional assessments of the body's compliance with this Act and the regulations;

(ii) that the body implements any appropriate recommendations arising from such an assessment;

(iii) that the body has an appropriate system established for managing the effects of the body's activities on the environment;

(iv) that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations, in so far as those requirements affect the employees, agents or contractors concerned; and

(b) what action (if any) the officer took when he or she became aware that the body was contravening:

(i) this Act; or

(ii) the regulations; or

(iii) if the body contravened Part 3 or section 142 or 142A—any action management plan that was prepared by the body, and approved by the Minister, as required by a condition attached to an approval under Part 9 for the purposes of a provision of Part 3 of the body's taking of an action.

(2) This section does not, by implication, limit the generality of sections 494 and 495.

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Division 18A—Liability of landholders for other people's actions

496A Who is a *landholder*?

For the purposes of this Division, a ***landholder***, in relation to an area of land, is a person who is an owner, lessee or occupier of the area of land.

496B Civil penalties for landholders

(1) If:

(a) a person (the ***actor***) takes an action on an area of land that is a contravention of:

(i) a provision of Part 3 that is a civil penalty provision; or

(ii) section 142; and

(b) a landholder in relation to the area of land knew that, or was reckless or negligent as to whether, the contravention would occur; and

(c) the landholder was in a position to influence the conduct of the actor in relation to the contravention; and

(d) the landholder failed to take all reasonable steps to prevent the contravention;

the landholder contravenes this subsection.

(2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order a landholder contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the landholder to pay, if the landholder had contravened the civil penalty provision contravened by the actor.

496C Criminal liability of landholders

(1) If:

(a) a person (the ***actor***) takes an action on an area of land that contravenes:

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(i) section 15A (Offences relating to declared World Heritage properties); or

(ii) section 15C (Offences relating to National Heritage places); or

(iii) section 17B (Offences relating to declared Ramsar wetlands); or

(iv) section 18A (Offences relating to threatened species etc.); or

(v) section 20A (Offences relating to listed migratory species); or

(vi) section 22A (Offences relating to nuclear actions); or

(vii) section 24A (Offences relating to marine areas); or

(viia) section 24E (Offences relating to water resources); or

(viii) section 27A (Offences relating to Commonwealth land); or

(ix) section 142A (Offence of breaching conditions on approval); and

(b) a landholder in relation to the area of land was reckless as to whether the contravention would occur; and

(c) the landholder was in a position to influence the conduct of the actor in relation to the contravention at the time when the contravention occurred; and

(d) the landholder failed to take all reasonable steps to prevent the contravention;

the landholder commits an offence.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) An offence against subsection (1) is punishable on conviction by imprisonment for the term specified in the provision contravened by the actor, a fine of the amount specified in that provision, or both.

Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under the provision.

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496D Did a landholder take reasonable steps to prevent a contravention?

(1) For the purposes of sections 496B and 496C, in determining whether a landholder failed to take all reasonable steps to prevent the contravention, a court is to have regard to:

(a) what action (if any) the landholder took directed towards ensuring that the actor had an appropriate system established for managing the effects of the actor's activities on the environment; and

(b) what action (if any) the landholder took upon becoming aware that there was a substantial risk that the actor was contravening provisions of this Act referred to in subsection 496B(1) or 496C(1), as the case requires.

(2) This section does not, by implication, limit the generality of sections 496B and 496C.

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Division 19—Infringement notices

497 Infringement notices

(1) The regulations may make provision enabling a person who is alleged to have committed an offence against section 142B or the regulations to pay a penalty to the Commonwealth as an alternative to prosecution.

(2) The penalty must not exceed one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

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Division 20—Publicising contraventions

498 Minister may publicise contraventions of this Act or the regulations

(1) The Minister may publicise, in any way he or she thinks appropriate, a contravention of this Act or the regulations for which a person has been convicted or ordered to pay a pecuniary penalty.

(2) This Division does not:

(a) limit the Minister's powers to publicise a contravention of this Act or the regulations; or

(b) prevent anyone else from publicising a contravention of this Act or the regulations; or

(c) affect any obligation (however imposed) on anyone to publicise a contravention of this Act or the regulations.

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Division 21—Immunity of officers

498A Immunity of officers and assistants

(1) An authorised officer or ranger is not liable to any proceedings relating to an act done, or omitted to be done, in good faith in the exercise or purported exercise of any power conferred on the officer or ranger by this Part, Schedule 1 (in the case of an authorised officer) or regulations made for the purposes of this Part or Division 5 of Part 15.

(2) A person requested by an authorised officer or ranger to assist the officer or ranger in the exercise or purported exercise of any power conferred on the officer or ranger by this Part, by Schedule 1 (in the case of an authorised officer), or by regulations made for the purposes of this Part or Division 5 of Part 15, is not liable to any proceedings relating to an act done, or omitted to be done, in good faith for the purpose of assisting the officer or ranger.

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Division 22—Conduct of directors, employees and agents

498B Conduct of directors, employees and agents

Bodies corporate—conduct

(1) Any conduct engaged in on behalf of a body corporate:
   (a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
   (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

   is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

Bodies corporate—state of mind

(2) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
   (a) that the conduct was engaged in by a person as mentioned in paragraph (1)(a) or (b); and
   (b) that the person had that state of mind.

Persons other than bodies corporate—conduct

(3) Any conduct engaged in on behalf of a person other than a body corporate:
   (a) by an employee or agent of the person within the scope of his or her actual or apparent authority; or
   (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or

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agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;

is to be taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

Persons other than bodies corporate—state of mind

(4) If, for the purposes of this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a person as mentioned in paragraph (3)(a) or (b); and

(b) that the person had that state of mind.

Reasonable precautions

(5) For the purposes of subsection (1) or (3), in determining whether a body corporate or other person took reasonable precautions and exercised due diligence to avoid particular conduct, a court must have regard to what steps (if any) the body or person took directed towards ensuring the following (to the extent that the steps are relevant to the conduct):

(a) that the body or person arranges regular professional assessments of the body's or person's compliance with this Act and the regulations;

(b) that the body or person implements any appropriate recommendations arising from such an assessment;

(c) that the body or person has an appropriate system established for managing the effects of the body's or person's activities on the environment;

(d) that the directors of the body, or the employees or agents of the body or person, have a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations, in so far as those requirements affect the directors, employees or agents concerned.

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*Meaning of **state of mind***

(6) A reference in subsection (2) or (4) to the ***state of mind*** of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

*Meaning of **director***

(7) A reference in this section to a ***director*** of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

*Meaning of **engage in conduct***

(8) A reference in this section to ***engaging in conduct*** includes a reference to failing or refusing to engage in conduct.

Disapplying Part 2.5 of Criminal Code

(9) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

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Part 18—Remedying environmental damage

499 Commonwealth powers to remedy environmental damage

(1) This section applies if the Minister suspects that an act or omission constitutes a contravention of this Act or the regulations (whether or not the act or omission is an offence against this Act or the regulations).

(2) On behalf of the Commonwealth, the Minister may cause to be taken such steps as he or she thinks proper:

(a) to repair or remove any condition that arises from the act or omission and relates to:

(i) the environment; or

(ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or

(b) to mitigate any damage that arises from the act or omission and relates to:

(i) the environment; or

(ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or

(c) to prevent any damage that is likely to arise from the act or omission and relates to:

(i) the environment; or

(ii) if the contravention was of a provision of Part 3—the matter protected by the provision.

(3) If:

(a) a person provided false or misleading information in contravention of section 489; and

(b) as a result of the contravention the Minister granted an environmental authority to a person, or set conditions relating to the environmental authority, unaware of the certainty or likelihood of the action covered by the authority:

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(i) resulting in damage to the environment or to a matter protected by a provision of Part 3; or

(ii) giving rise to a condition relating to the environment or to a matter protected by a provision of Part 3; and

(c) the action results in damage to the environment or gives rise to a condition relating to the environment;

then, for the purposes of this section and section 500, the damage or condition is taken to arise from the provision of false or misleading information in contravention of section 489.

(4) This section does not affect the exercise by the Commonwealth or the Minister of powers under another provision of this Act or under any other law.

500 Liability for loss or damage caused by contravention

(1) A person (the ***wrongdoer***) who contravenes this Act or the regulations is liable to pay to another person (the ***affected party***) who suffers loss or damage arising from the contravention an amount equal to the other person's loss or damage.

(2) Without limiting the amount payable under subsection (1), the loss or damage a person suffers from a contravention of this Act or the regulations includes the expenses and liabilities (if any) reasonably incurred by the affected party to:

(a) repair or remove any condition that arises from the act or omission constituting the contravention and relates to:

(i) the environment; or

(ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or

(b) mitigate any damage that arises from the act or omission constituting the contravention and relates to:

(i) the environment; or

(ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or

(c) prevent any damage likely to arise from the act or omission constituting the contravention and relates to:

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(i) the environment; or

(ii) if the contravention was of a provision of Part 3—the matter protected by the provision.

Note: This makes the person who contravenes the Act liable to pay the Commonwealth the expenses reasonably incurred in taking steps under section 499 in relation to the contravention.

(3) An amount payable under subsection (1) is a debt due to the affected party, recoverable in a court of competent jurisdiction.

(4) If 2 or more persons are liable under subsection (1) to pay an amount in respect of the same loss or damage, those persons are jointly and severally liable to pay the sum.

(5) A finding by a court in criminal proceedings or civil proceedings that the wrongdoer contravened this Act or the regulations is admissible as evidence of that fact in proceedings to recover an amount payable under subsection (1).

(6) This section applies:

(a) whether or not the contravention was an offence; and

(b) whether or not the provision contravened is a civil penalty provision.

(7) This section does not apply to a decision (or a failure to make a decision or conduct for the purposes of making a decision) purportedly under this Act or the regulations that contravenes this Act or the regulations.

501 Other powers not affected

This Division does not affect any other powers or rights under this Act, the regulations or any other law.

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Part 19—Organisations

Division 1—Establishment and functions of the Threatened Species Scientific Committee

502 Establishment

(1) The Threatened Species Scientific Committee is established.

(2) The Minister is to determine in writing the composition of the Committee, including the qualifications of its members.

(3) The Minister is to appoint the members of the Committee on a part-time basis, and must appoint one of the members to chair the Committee.

503 Functions of the Committee

The functions of the Committee are:

(a) to advise the Minister in accordance with Division 5 of Part 13 in relation to recovery plans, threat abatement plans and approved conservation advice; and

(b) to advise the Minister (on the Minister's request or on the Committee's initiative) on the amendment and updating of the lists established under Part 13; and

(c) to advise the Minister, at his or her request, on matters relating to the administration of this Act; and

(d) to give the Minister such other advice as is provided for in this Act; and

(e) to perform such other functions as are conferred on the Committee by this Act.

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Division 2A—Indigenous Advisory Committee

505A Establishment

(1) The Indigenous Advisory Committee is established.

(2) The Minister is to determine in writing the composition of the Committee, including the qualifications of its members.

(3) The Minister is to appoint the members of the Committee on a part-time basis, and must appoint one of the members to chair the Committee.

505B Functions of the Committee

(1) The function of the Committee is to advise the Minister on the operation of the Act, taking into account the significance of indigenous peoples' knowledge of the management of land and the conservation and sustainable use of biodiversity.

(2) The Minister may give the Committee written guidelines about its function.

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Division 2B—Establishment and functions of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development

505C Establishment

(1) The committee established by this section as previously in force is continued in existence with the new name of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development.

Note: See also section 25B of the *Acts Interpretation Act 1901*.

(2) The Committee is to consist of at least 5, but not more than 8, members.

(3) A member of the Committee is to be appointed by the Minister by written instrument, on a part-time basis.

(4) The Minister must appoint one member of the Committee to be the Chair.

(5) When appointing members of the Committee, the Minister must ensure that:

(a) each member (other than the Chair) possesses appropriate scientific qualifications or expertise that the Minister considers relevant to the performance of the Committee's functions; and

(b) each member's appointment is not being made to represent any particular body, group or community.

(6) The Minister must also ensure that a majority of the members possess scientific qualifications and expertise in one or more of the following areas:

(a) geology;

(b) hydrology;

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(c) hydrogeology;
(d) ecology.

Note: Other provisions relating to members are set out in Division 3.

505D Functions of the Committee

(1) The Committee has the following functions:
(a) within 2 months of a request by the Minister (the ***Environment Minister***)—to provide scientific advice to the Environment Minister in relation to proposed unconventional gas developments or large coal mining developments that are likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity;
(b) within 2 months of a request by an appropriate Minister of a declared State or Territory—to provide scientific advice to the Minister in relation to proposed unconventional gas developments or large coal mining developments in the relevant State or Territory that are likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity;
(c) at the request of the Environment Minister—to provide advice to the Environment Minister about:
(i) how bioregional assessments should be conducted in areas where unconventional gas development or large coal mining development is being carried out or is proposed; and
(ii) priority areas in which bioregional assessments should be undertaken; and
(iii) bioregional assessments commissioned by the Minister;
(d) at the request of the Environment Minister—to provide advice to the Environment Minister about:
(i) priorities for research projects to improve scientific understanding of the impacts of unconventional gas developments and large coal mining developments on

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water resources, including any impacts of associated salt production and/or salinity; and

(ii) research projects commissioned by the Minister in relation to the impacts of unconventional gas developments and large coal mining developments on water resources, including any impacts of associated salt production and/or salinity;

(e) to publish information about improving the consistency and comparability of research in relation to the impacts of unconventional gas developments and large coal mining developments on water resources, including any impacts of associated salt production and/or salinity;

(f) to publish information relating to the development of standards for protecting water resources from the impacts of unconventional gas development and large coal mining development, including from any impacts of associated salt production and/or salinity;

(g) to collect, analyse, interpret and disseminate scientific information in relation to the impacts of unconventional gas development and large coal mining development on water resources, including any impacts of associated salt production and/or salinity;

(h) any other functions prescribed by the regulations;

(i) to do anything incidental to, or conducive to, the performance of the above functions.

(2) The Committee also has the following functions:

(a) at the request of the Environment Minister—to provide scientific advice to the Environment Minister in relation to a matter that is protected by a provision of Part 3;

(b) at the request of the appropriate Minister of a declared State or Territory and with the written agreement of the Environment Minister—to provide scientific advice to the Minister of the State or Territory in relation to the matters specified in the request, if the Committee has sufficient scientific expertise.

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505E Declared States and Territories

(1) The Minister may, by legislative instrument, declare a specified State or self-governing Territory to be a ***declared State or Territory***.

(2) The Minister must not declare a State or a self-governing Territory unless, at the time of the declaration, the State or Territory is a party to the National Partnership Agreement on Coal Seam Gas and Large Scale Coal Mining Development between the Commonwealth and one or more States or self-governing Territories that commenced on 14 February 2012.

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Division 3—Members and procedures of Committees

506 Application

This Division applies to the following Committees:

(a) the Threatened Species Scientific Committee;

(c) the Indigenous Advisory Committee;

(d) the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development.

507 Terms and conditions

Term of office

(1) A member of a Committee holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: Section 509 sets out the circumstances in which a member's appointment may be (or must be) terminated.

Resignation

(2) A member of a Committee may resign his or her appointment by giving the Minister a written resignation.

Other terms and conditions

(3) A member of a Committee holds office on the terms and conditions (if any) that are determined by the Minister in relation to matters not covered by this Act or the regulations.

508 Remuneration

(1) A member of a Committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.

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(2) A member of a Committee is to be paid the allowances that are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

509 Termination of appointments of Committee members

Termination when person stops being qualified for appointment

(1) The appointment of a person to a position of member of a Committee is terminated when the person ceases to be qualified for appointment to the position.

Termination for misbehaviour or incapacity

(2) The Minister may terminate the appointment of a member of a Committee for misbehaviour or physical or mental incapacity.

Termination for failure to attend Committee meetings

(3) The Minister may terminate the appointment of a member of a Committee if the member is absent, except on leave of absence, from 3 consecutive meetings of the Committee of which the member has had notice.

Termination for engaging in conflicting work

(4) The Minister may terminate the appointment of a member of a Committee if the member engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of the member.

Termination for failure to disclose interests

(5) The Minister must terminate the appointment of a member of a Committee if:

(a) the member does not comply with any requirements prescribed by the regulations to disclose an interest the

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member has in a matter being considered or about to be considered by the Committee; and

(b) the member does not have a reasonable excuse for not complying.

Termination for bankruptcy or insolvency

(6) The Minister may terminate the appointment of a member of a Committee if the member:

(a) becomes bankrupt; or

(b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(c) compounds with his or her creditors; or

(d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

510 Procedure of a Committee

(1) The regulations may provide for:

(a) matters relating to the operation of a Committee, including:

(i) procedures for convening meetings of the Committee; and

(ii) procedures for determining who is to preside at a meeting of the Committee; and

(iii) determining who may attend a meeting of the Committee; and

(iv) the constitution of a quorum for a meeting of the Committee; and

(v) procedures relating to a member's interest in matters being dealt with by the Committee; and

(vi) the way in which matters are to be resolved by the Committee; and

(b) the appointment and rights of a deputy of a member of a Committee.

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(2) The regulations may allow a Committee to determine a matter relating to the operation of the Committee for which the regulations may provide.

(3) If there are no regulations in force, a Committee may operate in the way it determines.

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Division 4—Advisory committees

511 Minister may establish advisory committees

(1) The Minister may by written instrument establish an advisory committee to advise the Minister on specified matters relating to the administration of this Act.

(2) However, the Minister must not specify that an advisory committee is to advise the Minister on the management of a jointly managed reserve.

(3) The Minister is to determine in writing the composition of an advisory committee, including qualifications of its members.

512 Appointments

(1) The Minister may appoint a person on a part-time basis to be a member of an advisory committee.

(2) The Minister must appoint one of the members to chair the committee.

513 Members of advisory committees

The regulations may provide for the terms and conditions applicable to members of an advisory committee, including terms and conditions relating to:

(a) term of office; and
(b) remuneration; and
(c) allowances; and
(d) leave of absence; and
(e) disclosure of interests; and
(f) termination of membership.

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514 Committee procedure

(1) An advisory committee may operate in the way it determines, subject to any regulations.

(2) The regulations may provide for the operation and procedures of an advisory committee. The regulations may allow a committee to determine its own procedure on any matter.

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Division 5—Director of National Parks

Subdivision A—Establishment, functions and powers

514A Continuation

The corporation sole that existed under section 15 of the *National Parks and Wildlife Conservation Act 1975* immediately before the commencement of this Act continues in existence as the Director of National Parks.

Note: Subject to section 514U, the *Public Governance, Performance and Accountability Act 2013* applies to the Director. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

514B Functions

(1) The functions of the Director are:

(a) to administer, manage and control Commonwealth reserves and conservation zones; and

(b) to protect, conserve and manage biodiversity and heritage in Commonwealth reserves and conservation zones; and

(ba) to contribute to the protection, conservation and management of biodiversity and heritage in areas outside Commonwealth reserves and conservation zones; and

(c) to co-operate with any country in matters relating to the establishment and management of national parks and nature reserves in that country; and

(d) to provide, and assist in the provision of, training in the knowledge and skills relevant to the establishment and management of national parks and nature reserves; and

(e) to carry out alone or in co-operation with other institutions and persons, and to arrange for any other institution or person to carry out, research and investigations relevant to the establishment and management of Commonwealth reserves; and

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(f) to make recommendations to the Minister in relation to the establishment and management of Commonwealth reserves; and

(g) to administer the Australian National Parks Fund; and

(h) any other functions conferred on the Director under this or any other Act; and

(i) to do anything incidental or conducive to the performance of any of the functions mentioned in paragraphs (a) to (h) (inclusive).

Note 1: Section 514D sets out requirements relating to the performance of the Director's functions.

Note 2: The Minister may delegate additional functions to the Director under subsection 515(1).

(2) The Director may perform any of the Director's functions in co-operation with a State, a self-governing Territory, an agency of a State or self-governing Territory or a Commonwealth agency.

514C Powers

(1) The Director has power to do all things necessary or convenient to be done for or in connection with the performance of the Director's functions.

(2) The Director's powers include, but are not limited to, the following powers:

(a) to enter into contracts; and

(b) to erect buildings and structures and carry on works; and

(c) to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Director; and

(d) to acquire, hold and dispose of real or personal property; and

(e) despite section 514D, obtain goods or services on credit from any person by the use of a credit card; and

(f) to accept gifts, devises and bequests made to the Director whether on trust or otherwise, and to act as trustee of moneys or other property vested in the Director upon trust.

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Note: Section 514D sets out limits on the Director's powers.

514D Requirements relating to functions and powers

Ministerial directions

(1) The Director must perform the Director's functions and exercise the Director's powers in accordance with any directions given by the Minister, unless this Act provides otherwise.

Consultation

(2) The Director must consult and have regard to the views of the following persons in relation to the performance of the Director's functions and the exercise of the Director's powers in relation to a Commonwealth reserve or conservation zone:

(a) if the reserve or zone is wholly or partly in a State or self-governing Territory—the agency (if any) of the State or Territory responsible for managing national parks established under the law of the State or Territory;

(b) if the reserve or zone is wholly or partly in an area for which an Aboriginal Land Council has been established under the *Aboriginal Land Rights (Northern Territory) Act 1976*—the Chairperson of the Council;

(c) if the reserve is Booderee National Park—the Chairperson of the Wreck Bay Aboriginal Community Council.

Trust property

(4) The Director must deal with any money or property vested in the Director on trust in accordance with the powers and duties of the Director as trustee, despite the other provisions of this Act.

Limits on contracts and leases

(5) The Director must not:

(a) enter into a contract involving the payment or receipt of an amount more than:

(i) $1,000,000; or

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(ii) if the regulations prescribe a greater amount—that greater amount; or

(b) take land (except indigenous people's land) on lease for more than 10 years;

without the Minister's approval.

No borrowing

(6) The Director must not borrow money in the performance of the Director's functions.

Subdivision B—Constitution of Director of National Parks

514E Constitution

(1) The Director:

(a) is a body corporate with perpetual succession; and

(b) must have a seal; and

(c) may sue and be sued in its corporate name.

(2) All courts, judges and persons acting judicially must:

(a) take judicial notice of the imprint of the seal of the Director appearing on a document; and

(b) presume that the document was duly sealed.

514F Appointment

(1) A person is to be appointed as the Director by the Governor-General by written instrument.

(2) Before the Governor-General appoints a person as the Director, the Minister must be satisfied that the person has qualifications and experience in connection with national parks or the conservation and management of biodiversity that make the person suitable for the appointment.

(3) The appointment is on a full-time basis. However, a person appointed as the Director may also hold an office or be employed

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in the Australian Public Service on a part-time basis, subject to this Division.

514G Acting appointments

(1) The Minister may appoint a person to act as the Director:
  (a) during a vacancy in the office of Director; or
  (b) during any period, or during all periods, when the person appointed as the Director is absent from duty or from Australia, or is, for any reason, temporarily unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(2) A person acting as the Director is taken to constitute the corporation mentioned in section 514A while the person is acting.

Subdivision C—Terms and conditions of appointment

514H Term of office

The person appointed as the Director holds office for the period specified in the instrument of appointment. The period must not exceed 7 years.

514J Remuneration

(1) The person appointed as the Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the person is to be paid the remuneration that is prescribed.

(2) The person is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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514K Outside employment

The person appointed as the Director must not engage in paid employment outside the duties of the Director's office without the Minister's approval.

514M Leave of absence

(1) The person appointed as the Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the person appointed as the Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

514N Resignation

The person appointed as the Director may resign his or her appointment by giving the Governor-General a written resignation.

514P Termination

(1) The Governor-General may terminate the appointment of a person as the Director for misbehaviour or physical or mental incapacity.

(2) The Governor-General may terminate the appointment of a person as the Director if:

(a) the person:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the person is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) the person engages, except with the Minister's approval, in paid employment outside the duties of the office of Director.

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Note: The appointment of a person as the Director may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

514Q Other terms and conditions

The person appointed as the Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

Subdivision D—Australian National Parks Fund

514R Australian National Parks Fund

The fund established by section 45 of the *National Parks and Wildlife Conservation Act 1975* continues in existence as the Australian National Parks Fund, vested in the Director.

514S Payments to Australian National Parks Fund

The following amounts are to be paid into the Australian National Parks Fund:

(a) any money appropriated by the Parliament for the purposes of the Department and allocated by the Secretary for the management of Commonwealth reserves or conservation zones;

(b) the proceeds of the sale of any property acquired out of money standing to the credit of the Fund;

(c) any amounts paid to the Director in respect of leases, licences, permits and other authorities granted by the Director in relation to Commonwealth reserves or conservation zones;

(d) any other amount paid by a person to the Director if:

(i) payment of the amount into the Fund would be consistent with the purposes for which the amount was paid; and

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(ii) the Minister administering the *Public Governance, Performance and Accountability Act 2013* considers it appropriate that the amount should be paid into the Fund;

(e) any charges paid under section 356A or section 390F;

(f) any other money received by the Director in the performance of his or her functions.

514T Application of money

(1) The money of the Australian National Parks Fund may be applied only:

(a) in payment or discharge of the costs, expenses and other obligations incurred by the Director in the performance of the Director's functions; and

(b) in payment of any remuneration, allowances and compensation payable under this Division or Division 4 of Part 15.

(2) Subsection (1) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the Fund.

Subdivision E—Accountability

514U Application of *Public Governance, Performance and Accountability Act 2013*

(1) Sections 514A and 514E provide that the Director is a corporation. The *Public Governance, Performance and Accountability Act 2013* applies (subject to subsection (2) of this section) in relation to the corporation as if the person holding, or performing the duties of, the office of Director were an accountable authority of the corporation for the purposes of that Act.

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(2) To avoid doubt, the *Public Governance, Performance and Accountability Act 2013* applies to the Australian National Parks Fund as though the Fund were money held by the Director.

514V Extra matters to be included in annual report

The annual report prepared by the Director under and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must also include particulars of any directions given by the Minister under subsection 514D(1) of this Act during the period.

Subdivision F—Miscellaneous

514W Exemption from taxation

The income of the Australian National Parks Fund and the property and transactions of the Director are not subject to taxation under a law of the Commonwealth or of a State or Territory.

514X Changes in office of Director

An authority given, or a delegation or appointment made, by a person for the time being holding or acting in the office of Director continues in force despite the person ceasing to hold or act in that office, but may be revoked by a person later holding or acting in that office.

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Part 19A—Reconsideration of fees

514Y Applications for reconsideration of fee

(1) This section applies if a fee is worked out by a person to whom a function or power is delegated under section 515.

(2) If:

(a) a method prescribed by the regulations under subsection 520(4C) has been used to work out a fee; and

(b) the person required to pay the fee is dissatisfied with the way the method was used to work out the fee;

the person may apply to the Secretary for the Secretary to reconsider the way the method was used to work out the fee.

(3) The application must:

(a) be in a form prescribed by the regulations; and

(b) set out the reasons for the application.

(4) The application must be made within 30 business days after the applicant is informed of the fee.

(5) A person may apply only once in relation to a fee.

514YA Reconsideration of fee

(1) Upon receiving an application for reconsideration of a fee, the Secretary must:

(a) reconsider the way the method was used to work out the fee; and

(b) either:

(i) confirm the fee; or

(ii) work out a new fee by using the method again.

(2) The person who undertakes the reconsideration must be:

(a) the Secretary; or

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(b) an employee in the Department who:
(i) was not involved in working out the fee; and
(ii) occupies a position that is senior to that occupied by any person involved in working out the fee.

(3) The Secretary must give to the applicant a written notice that:
(a) states the outcome of the reconsideration; and
(b) gives reasons for that outcome.

514YB Deadline for reconsideration

The Secretary must undertake a reconsideration of a fee within 30 business days after receiving an application for reconsideration.

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Part 20—Delegation

515 Delegation

(1) The Minister may, by signed instrument, delegate all or any of his or her powers or functions under this Act to an officer or employee in the Department or to the Director. The delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the Minister.

(2) The Secretary may, by signed instrument, delegate all or any of his or her powers or functions under this Act to an officer or employee in the Department or to the Director. The delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the Secretary.

(3) The Director may, by sealed instrument, delegate all or any of the Director's powers or functions under this Act to a person. The delegate is, in the exercise of a delegated power or function, subject to the directions of the Director.

515AA Delegation by Minister in relation to Great Barrier Reef Marine Park

(1) The Minister may, by signed instrument, delegate any or all of his or her powers or functions to which subsection (2) applies to:
  (a) the Great Barrier Reef Marine Park Authority; or
  (b) the Chief Executive Officer of the Great Barrier Reef Marine Park Authority; or
  (c) a member of the staff of the Great Barrier Reef Marine Park Authority.

(2) For the purposes of subsection (1), this subsection applies to a power or function if:
  (a) the exercise of the power or performance of the function relates (including in a way described in subsection 7(1A) of

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the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park; or

(b) the exercise of the power or performance of the function is incidental to a matter that relates (including in a way described in subsection 7(1A) of the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park.

Note: If a power or function is delegated to the Great Barrier Reef Marine Park Authority under this section, the Authority may sub-delegate the power or function under section 47 of the *Great Barrier Reef Marine Park Act 1975*.

(3) Despite subsection (1), the Minister must not delegate under that subsection a power or function under Part 17 (Enforcement) to a person mentioned in paragraph (1)(c) unless the person:

(a) is an SES employee or an acting SES employee; or

(b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.

(4) In exercising a power or performing a function under a delegation, the delegate must comply with any directions of the Minister.

(5) This section does not limit the Minister's power of delegation under section 515.

515AB Delegation by Secretary in relation to Great Barrier Reef Marine Park

(1) The Secretary may, by signed instrument, delegate any or all of his or her powers or functions to which subsection (2) applies to:

(a) the Great Barrier Reef Marine Park Authority; or

(b) the Chief Executive Officer of the Great Barrier Reef Marine Park Authority; or

(c) a member of the staff of the Great Barrier Reef Marine Park Authority.

(2) For the purposes of subsection (1), this subsection applies to a power or function if:

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(a) the exercise of the power or performance of the function relates (including in a way described in subsection 7(1A) of the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park; or

(b) the exercise of the power or performance of the function is incidental to a matter that relates (including in a way described in subsection 7(1A) of the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park.

Note: If a power or function is delegated to the Great Barrier Reef Marine Park Authority under this section, the Authority may sub-delegate the power or function under section 47 of the *Great Barrier Reef Marine Park Act 1975*.

(3) Despite subsection (1), the Secretary must not delegate under that subsection a power or function under Part 17 (Enforcement) to a person mentioned in paragraph (1)(c) unless the person:

(a) is an SES employee or an acting SES employee; or

(b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.

(4) In exercising a power or performing a function under a delegation, the delegate must comply with any directions of the Secretary.

(5) This section does not limit the Secretary's power of delegation under section 515.

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Part 20A—Publication of information on the internet

515A Publication of information on the internet

Without limiting the operation of section 170A, the Secretary must publish on the internet each week a list of:

(a) all permits issued or granted under this Act in the immediately preceding week; and

(b) all matters required by this Act to be made available to the public in the immediately preceding week.

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Part 21—Reporting

Division 1—Annual reports

516 Annual report on operation of Act

(1) The Secretary must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operation of this Act (except Divisions 4 and 5 of Part 15 and Division 5 of Part 19) for the 12 months ending on that 30 June.

Note 1: Other provisions of this Act require the report to include certain matters.

Note 2: Section 34C of the *Acts Interpretation Act 1901* sets out rules about the time within which annual reports must be given to the Minister.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

516A Annual reports to deal with environmental matters

Annual reports for Commonwealth entities

(1) The accountable authority of a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) must ensure that an annual report prepared under section 46 of that Act complies with subsection (6) of this section.

Annual reports of Commonwealth companies

(4) The directors of a Commonwealth company (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that is a Commonwealth agency must ensure that the documents given to the responsible Minister (within the meaning of that Act) under section 97 of that Act include a report complying with subsection (6) of this section.

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Annual reports of other Commonwealth agencies

(5) A Commonwealth agency that is:
  (a) established by or under a law of the Commonwealth; and
  (b) required by law to give the Minister responsible for it an annual report; and
  (c) not described in subsection (1) or (4);

must ensure that the annual report complies with subsection (6).

Content of report

(6) A report described in subsection (1), (4) or (5) relating to a body or person (the ***reporter***) for a period must:
  (a) include a report on how the activities of, and the administration (if any) of legislation by, the reporter during the period accorded with the principles of ecologically sustainable development; and
  (b) identify how the outcomes (if any) specified for the reporter in an Appropriations Act relating to the period contribute to ecologically sustainable development; and
  (c) document the effect of the reporter's activities on the environment; and
  (d) identify any measures the reporter is taking to minimise the impact of activities by the reporter on the environment; and
  (e) identify the mechanisms (if any) for reviewing and increasing the effectiveness of those measures.

Note: The *Auditor-General Act 1997* lets the Auditor-General audit a reporter's compliance with these requirements.

(7) In subsection (6):

activities includes:
  (a) developing and implementing policies, plans, programs and legislation; and
  (b) the operations of a department, authority, company or agency referred to in this section.

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Division 2—State of the environment reports

516B State of the environment reports

(1) The Minister must cause a report on the environment in the Australian jurisdiction to be prepared in accordance with the regulations (if any) every 5 years. The first report must be prepared by 31 December 2001.

(2) The report must deal with the matters prescribed by the regulations.

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

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Chapter 7—Miscellaneous

Part 22—Miscellaneous

517 Determinations of species

(1) The Minister may, by legislative instrument, determine that a distinct population of biological entities is a species for the purposes of this Act.

(3) A determination does not apply for the purposes of:
  (a) Part 13A; or
  (b) the definitions of ***CITES I species***, ***CITES II species*** and ***CITES III species*** in section 528.

(4) Subsection (3) does not affect the meaning of the expression ***listed threatened species*** when used in Part 13A.

517A Exemption for activities that might harm particular species introduced into particular areas

Provisions for which this section applies

(1) This section applies for the purposes of the provisions of the following sections:
  (a) sections 18 and 18A;
  (b) sections 20 and 20A;
  (c) sections 196 to 196E;
  (d) section 207B;
  (e) sections 211 to 211E;
  (f) sections 254 to 254E.

Minister may exempt carrying on of activities

(2) The Minister may, in writing, exempt from the provisions mentioned in subsection (1) the carrying on of particular activities

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by particular persons (or a particular class of persons), in a particular area, that will or may have an impact on a particular species or its habitat. The species must be a listed threatened species, a listed migratory species or a listed marine species.

Matters Minister must be satisfied of

(3) An exemption under subsection (2) may only be given if the Minister is satisfied that:

(a) members of the species have been, or are proposed to be, introduced into the area by or on behalf of a person (whether the person is a Commonwealth agency or otherwise); and

(b) the purpose of the introduction, or proposed introduction, of the members of the species into the area was or is to make a contribution to the conservation of the species; and

(c) carrying on the activities in the area will or may have an impact on members of the species, or their habitat, but any such impact would be incidental to, and not the purpose of, the activities; and

(d) if the person referred to in paragraph (a) is not the person who is or will be primarily responsible for carrying out the activities—the person who is or will be so responsible has agreed to the introduction of the members of the species into the area.

(4) For the purpose of deciding whether to give an exemption under subsection (2), the Minister may (subject to subsection (3)):

(a) have regard to any matters the Minister considers appropriate; and

(b) seek, and have regard to, information or advice from any source.

What must be specified in an exemption

(5) An exemption under subsection (2) must:

(a) specify the species to which it applies; and

(b) specify the area to which it applies; and

(c) specify the activities to which it applies; and

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(d) specify the persons (or classes of persons) who, if they engage in actions that are within the activities, are covered by the exemption.

When an exemption comes into force

(6) An exemption under subsection (2) comes into force on the day the Minister gives the exemption, or on a later day specified in the exemption.

Actions covered by exemption do not contravene provisions for which this section applies

(7) While an exemption under subsection (2) is in force, an action of a person does not contravene any of the provisions mentioned in subsection (1), in so far as the provisions apply in relation to a member of the species specified as mentioned in paragraph (5)(a), if:

(a) the action occurs in the area specified as mentioned in paragraph (5)(b); and

(b) the action is within the activities specified as mentioned in paragraph (5)(c); and

(c) the person is a person, or is a member of a class of persons, specified as mentioned in paragraph (5)(d).

Note 1: If the action also has an impact on a member of another species that is not covered by an exemption under subsection (2), subsection (7) does not affect the question whether the action may contravene a provision mentioned in subsection (1), in so far as the provision applies to the other species.

Note 2: In a prosecution for an offence against a provision mentioned in subsection (1), the defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exemption is not a legislative instrument

(8) An exemption under subsection (2) is not a legislative instrument.

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518 Non-compliance with time limits

(1) Anything done by the Commonwealth, the Minister or the Secretary under this Act or the regulations is not invalid merely because it was not done within the period required by this Act or the regulations.

(2) If, during a financial year, one or more things required to be done under this Act or the regulations were not done within the period required by this Act or the regulations, the Minister must:

(a) cause to be prepared a statement setting out the reasons why each of those things was not done within the period required by this Act or the regulations; and

(b) cause a copy of the statement to be laid before each House of the Parliament as soon as practicable after the end of the financial year.

(3) Subsection (1) does not reduce or remove an obligation under this Act or the regulations to do a thing within a particular period.

519 Compensation for acquisition of property

When compensation is necessary

(1) If, apart from this section, the operation of this Act would result in an acquisition of property from a person that would be invalid because of paragraph 51(xxxi) of the Constitution (which deals with acquisition of property on just terms) the Commonwealth must pay the person a reasonable amount of compensation.

Definition

(2) In this Act:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

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Court can decide amount of compensation

(3) If the Commonwealth and the person do not agree on the amount of compensation to be paid, the person may apply to the Federal Court for the recovery from the Commonwealth of a reasonable amount of compensation fixed by the Court.

Other compensation to be taken into account

(4) In assessing compensation payable by the Commonwealth, the Court must take into account any other compensation or remedy arising out of the same event or situation.

520 Regulations

(1) The Governor-General may make regulations prescribing all matters:
  (a) required or permitted by this Act to be prescribed; or
  (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may prescribe penalties for offences against the regulations. A penalty must not be more than 50 penalty units.

(3) Regulations may be made for and in relation to giving effect to any of the following agreements:
  (a) the Apia Convention;
  (b) the Convention for the Protection of the Natural Resources and Environment of the South Pacific (the SPREP Convention) signed at Noumea on 24 November 1986;
  (c) the Bonn Convention;
  (d) CAMBA;
  (e) JAMBA;
  (f) an agreement between the Commonwealth and one or more other countries relating to whales;
  (g) the World Heritage Convention;
  (h) the Ramsar Convention;
  (i) the Biodiversity Convention;

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(j) CITES;
(k) the Framework Convention on Climate Change done at New York on 9 May 1992.

(4) Regulations made in relation to an agreement that has not entered into force for Australia are not to come into operation on a day earlier than the day on which the agreement enters into force for Australia.

(4A) The regulations may prescribe fees that are payable for services the Minister or Secretary provides in performing functions, or exercising powers, under this Act or the regulations.

(4B) A fee prescribed by the regulations is payable to the Commonwealth.

(4C) Regulations prescribing fees may also:
(a) prescribe fees in respect of:
(i) a particular class of decision; or
(ii) a particular class of action; or
(iii) a particular class of person; and
(b) prescribe 2 or more fees for the same matter; and
(c) prescribe a method for working out a fee; and
(d) prescribe a method for working out the refund of part of a fee; and
(e) deal with other matters, including the following:
(i) specifying the way in which, and times at which, a fee is to be paid;
(ii) specifying the fees that must be paid, and by whom, in the event of a transfer under section 145B or a change of person proposing to take an action under section 156F;
(iii) the consequences of failure to pay a specified fee;
(iv) the circumstances in which the Minister may waive a fee;
(v) the circumstances in which a person is exempt from paying a specified fee;

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(vi) the circumstances in which a fee may be refunded, in whole or in part.

(5) Subsections (3), (4A) and (4C) do not limit subsection (1).

(6) The regulations may prohibit or regulate the export from an external Territory to Australia or another external Territory of:
(a) CITES specimens; and
(b) regulated native specimens.

(7) The regulations may prohibit or regulate the import into an external Territory from Australia or another external Territory of:
(a) CITES specimens; and
(b) regulated live specimens.

(8) The regulations may prohibit or regulate the possession in an external Territory of:
(a) specimens that have been imported into that Territory in contravention of regulations made for the purposes of subsection (7); or
(b) the progeny of such specimens.

520A Statements about the application of the Act

(1) The Minister may issue, in writing, statements about the way in which the Minister considers that provisions of the Act or the regulations apply or would apply to:
(a) persons generally or a class of persons; or
(b) persons generally or a class of persons in relation to particular circumstances.

(2) A statement made under subsection (1) is not a legislative instrument.

521 Fees and charges must not be taxes

A fee or charge provided for by or under this Act, and whether prescribed by the regulations or not, must be reasonably related to

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the expenses incurred or to be incurred by the Commonwealth in relation to the matters to which the fee or charge relates and must not be such as to amount to taxation.

521A Time does not run if all or part of fee remains unpaid

(1) If:

(a) one or more fees are payable in respect of a service the Minister or Secretary provides in performing functions, or exercising powers, under this Act or the regulations; and

(b) a provision of this Act or the regulations:

(i) requires or allows the Minister or Secretary to do a thing relating to the service; or

(ii) requires or allows the Minister or Secretary to do a thing relating to the service within a particular period; and

(c) all of part of a fee relating to the service remains unpaid;

then:

(d) if subparagraph (b)(i) applies—the Minister or Secretary need not do the thing until all of the required fee is paid; and

(e) if subparagraph (b)(ii) applies and the period has not begun—the period does not begin until all of the required fee is paid; and

(f) if subparagraph (b)(ii) applies and the period has begun—the period stops until all of the required fee is paid and, when paid, begins again for the balance of the period.

(2) For the purposes of paragraphs (1)(e) and (f), the day that all of the required fee is paid is not to be counted in the relevant period.

522 Financial assistance etc. to be paid out of appropriated money

Payment of amounts of financial assistance under this Act, and of any amounts that the Commonwealth is required to pay to a person under this Act or an agreement made under this Act, are to be made out of money appropriated by the Parliament for the purpose.

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522A Review of operation of Act

(1) The Minister must cause independent reviews to be undertaken by a person or body of:
  (a) the operation of this Act; and
  (b) the extent to which the objects of this Act have been achieved.

(2) The first review must be undertaken within 10 years of the commencement of this Act. Later reviews must be undertaken at intervals of not more than 10 years.

(3) The person or body undertaking a review must give a report of the review to the Minister.

(4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

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Chapter 8—Definitions

Part 23—Definitions

Division 1—Some definitions relating to particular topics

Subdivision A—Actions

523 *Actions*

(1) Subject to this Subdivision, ***action*** includes:
  (a) a project; and
  (b) a development; and
  (c) an undertaking; and
  (d) an activity or series of activities; and
  (e) an alteration of any of the things mentioned in paragraph (a), (b), (c) or (d).

524 Things that are not *actions*

(1) This section applies to a decision by each of the following kinds of person (***government body***):
  (a) the Commonwealth;
  (b) a Commonwealth agency;
  (c) a State;
  (d) a self-governing Territory;
  (e) an agency of a State or self-governing Territory;
  (f) an authority established by a law applying in a Territory that is not a self-governing Territory.

(2) A decision by a government body to grant a governmental authorisation (however described) for another person to take an action is not an ***action***.

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(3) To avoid doubt, a decision by the Commonwealth or a Commonwealth agency to grant a governmental authorisation under one of the following Acts is not an ***action***:

(a) the *Customs Act 1901*;
(b) the *Export Control Act 2020*;
(c) the *Export Finance and Insurance Corporation Act 1991*;
(d) the *Fisheries Management Act 1991*;
(e) the *Foreign Acquisitions and Takeovers Act 1975*;
(f) the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
(g) the *Biosecurity Act 2015*;
(h) the *Competition and Consumer Act 2010*;
(i) the *Offshore Electricity Infrastructure Act 2021*.

This subsection does not limit this section.

524A Provision of grant funding is not an *action*

Provision of funding by way of a grant by one of the following is not an ***action***:

(a) the Commonwealth;
(b) a Commonwealth agency;
(c) a State;
(d) a self-governing Territory;
(e) an agency of a State or self-governing Territory;
(f) an authority established by a law applying in a Territory that is not a self-governing Territory.

Subdivision B—Areas

525 Commonwealth areas

*What is a **Commonwealth area**?*

(1) Each of the following, and any part of it, is a ***Commonwealth area***:

(a) land owned by the Commonwealth or a Commonwealth agency and airspace over the land;

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(b) an area of land held under lease by the Commonwealth or a Commonwealth agency and airspace over the land;
(c) land in:
(i) an external Territory; or
(ii) the Jervis Bay Territory;
and airspace over the land;
(d) the coastal sea of Australia or an external Territory;
(e) the continental shelf, and the waters and airspace over the continental shelf;
(f) the waters of the exclusive economic zone, the seabed under those waters and the airspace above those waters;
(g) any other area of land, sea or seabed that is included in a Commonwealth reserve.

Territory Land in ACT is not a Commonwealth area

(2) Despite paragraph (1)(a), an area of land that is Territory Land, within the meaning of the *Australian Capital Territory (Planning and Land Management) Act 1988* is not a ***Commonwealth area*** merely because of that paragraph, unless it is held under lease by the Commonwealth or a Commonwealth agency.

Freehold land in Christmas Island Territory is not a Commonwealth area

(2A) Despite subparagraph (1)(c)(i), an area of land in the Territory of Christmas Island is not a ***Commonwealth area*** merely because of that subparagraph if a person holds a freehold interest in the land.

Coastal waters of States and NT are not Commonwealth areas

(3) Despite paragraphs (1)(d), (e) and (f), none of the following areas (or parts of them) are ***Commonwealth areas***:
(a) the seabed vested in a State under section 4 of the *Coastal Waters (State Title) Act 1980*; and
(b) the seabed vested in the Northern Territory under section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and

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(c) the subsoil under the seabed described in paragraph (a) or (b); and
(d) any water and airspace over seabed described in paragraph (a) or (b).

Subdivision C—Entities

526 Subsidiaries of bodies corporate

The question whether a body corporate is a subsidiary of a body or company is to be determined in the same way as the question whether a body corporate is a subsidiary of another body corporate is determined for the purposes of the *Corporations Act 2001*.

Subdivision D—Criminal law

527 Convictions

A reference in this Act to a conviction of a person of an offence includes a reference to making an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

Subdivision E—Specimens

527A Specimens

(1) For the purposes of this Act, a ***specimen*** is:
(a) an animal; or
(b) animal reproductive material; or
(c) the skin, feathers, horns, shell or any other part of an animal; or
(d) any article wholly produced by or from, or otherwise wholly derived from, a single animal; or
(e) a plant; or
(f) plant reproductive material; or

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(g) any part of a plant; or
(h) any article wholly produced by or from, or otherwise wholly derived from, a single plant.

(2) However, a fossil, or a mineralised deposit, is not a ***specimen*** for the purposes of this Act.

(3) In any provision of this Act, references to a ***specimen*** are to be read as including references to an article that consists of, or is derived from:
(a) a specimen and material other than a specimen; or
(b) 2 or more specimens; or
(c) 2 or more specimens and material other than a specimen.

(4) If an article consists of, or is derived from, 2 or more specimens, either with or without any material other than a specimen, then this Act applies to and in relation to that article separately in so far as it consists of, or is derived from, each of those specimens.

(5) For the purposes of this Act:
(a) if a live animal (other than animal reproductive material) that was bred in captivity dies, the dead animal and specimens derived from the dead animal are taken to be specimens derived from that live animal; and
(b) if a live plant (other than plant reproductive material) that was artificially propagated dies, the dead plant and specimens derived from the dead plant are taken to be specimens derived from that live plant; and
(c) a specimen covered by paragraph (1)(b), (c) or (d) is taken to be derived from the animal concerned; and
(d) a specimen covered by paragraph (1)(f), (g) or (h) is taken to be derived from the plant concerned; and
(e) if a specimen is derived from an animal that belongs to a particular species or taxon, the specimen is taken to belong to that species or taxon; and
(f) if a specimen is derived from a plant that belongs to a particular species or taxon, the specimen is taken to belong to that species or taxon.

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(6) In this section:

this Act does not include sections 356 and 390E.

527B Breeding in captivity

For the purposes of this Act, a live animal of a particular kind is taken to have been ***bred in captivity*** if, and only if, it was bred in circumstances declared by the regulations to be circumstances the breeding in which of:

(a) any live animal; or

(b) any live animal of that kind; or

(c) any live animal included in a class of live animals that includes live animals of that kind;

would constitute breeding in captivity.

527C Artificial propagation

For the purposes of this Act, a live plant of a particular kind is taken to have been ***artificially propagated*** if, and only if, it was propagated in circumstances declared by the regulations to be circumstances the propagation in which of:

(a) any live plant; or

(b) any live plant of that kind; or

(c) any live plant included in a class of live plants that includes live plants of that kind;

would constitute artificial propagation.

527D Things represented to be CITES specimens

(1) For the purposes of this Act, if a thing is represented by an accompanying document, the package or a mark or label, or from any other circumstances, to be:

(a) the skin, feathers, horns, shell or any other part of a CITES listed animal; or

(b) part of a CITES listed plant; or

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(c) reproductive material from a CITES listed animal or a CITES listed plant; or

(d) an article produced by or from, or derived from, one or more CITES listed animals or one or more CITES listed plants, whether with or without any other material;

then the thing is taken to be a CITES specimen.

Note: This subsection has the effect (among other things) of widening the scope of sections 303CC, 303CD and 303GN, which are offence provisions relating to the export, import and possession of specimens.

(2) The Minister must not issue a permit under section 303CG authorising the export or import of a thing that is taken under subsection (1) to be a CITES specimen unless the thing is a CITES specimen apart from subsection (1).

(3) In this section:

CITES listed animal means an animal of a species included in Appendix I, II or III to CITES.

CITES listed plant means a plant of a species included in Appendix I, II or III to CITES.

export has the same meaning as in Part 13A.

import has the same meaning as in Part 13A.

Subdivision F—Impacts

527E Meaning of *impact*

(1) For the purposes of this Act, an event or circumstance is an ***impact*** of an action taken by a person if:

(a) the event or circumstance is a direct consequence of the action; or

(b) for an event or circumstance that is an indirect consequence of the action—subject to subsection (2), the action is a substantial cause of that event or circumstance.

(2) For the purposes of paragraph (1)(b), if:

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(a) a person (the ***primary person***) takes an action (the ***primary action***); and

(b) as a consequence of the primary action, another person (the ***secondary person***) takes another action (the ***secondary action***); and

(c) the secondary action is not taken at the direction or request of the primary person; and

(d) an event or circumstance is a consequence of the secondary action;

then that event or circumstance is an ***impact*** of the primary action only if:

(e) the primary action facilitates, to a major extent, the secondary action; and

(f) the secondary action is:

(i) within the contemplation of the primary person; or

(ii) a reasonably foreseeable consequence of the primary action; and

(g) the event or circumstance is:

(i) within the contemplation of the primary person; or

(ii) a reasonably foreseeable consequence of the secondary action.

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Division 2—General list of definitions

528 Definitions

In this Act, unless the contrary intention appears:

accredited authorisation process has the meaning given by subsection 33(2A).

accredited management arrangement has the meaning given by subsection 33(2).

acquisition of property has the meaning given by subsection 519(2).

action has the meaning given by Subdivision A of Division 1 of Part 23.

action management plan, in relation to an action, means a plan for managing the impacts of the action on a matter protected by a provision of Part 3, such as a plan for conserving habitat of a species.

agency of a State or self-governing Territory means:

(a) a Minister of the State or Territory; or

(b) a body corporate established for a public purpose by a law of the State or Territory; or

(c) a body corporate established by:

(i) the Governor of the State; or

(ii) if the Territory is the Australian Capital Territory—the Governor-General acting in relation to the Australian Capital Territory; or

(iii) if the Territory is the Northern Territory—the Administrator of the Territory; or

(iv) a Minister of the State or Territory;

otherwise than by or under a law of the State or Territory; or

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(d) a company in which the whole of the shares or stock, or shares or stock carrying more than one-half of the voting power, is or are owned by or on behalf of the State or Territory; or

(e) a body corporate that is a subsidiary of:

(i) a body or company referred to in paragraph (b), (c) or (d); or

(ii) a body corporate that, because of a previous application or previous applications of this paragraph, is taken to be an agency of the State or Territory for the purposes of this definition; or

(f) a person holding, or performing the duties of:

(i) an office established by or under a law of the State or Territory (except a judicial office or an office of member of a tribunal); or

(ii) an appointment made under a law of the State or Territory (except appointment to a judicial office or an office of member of a tribunal); or

(g) a person holding, or performing the duties of, an appointment made by:

(i) the Governor of the State; or

(ii) if the Territory is the Australian Capital Territory—the Governor-General acting in relation to the Australian Capital Territory; or

(iii) if the Territory is the Northern Territory—the Administrator of the Territory; or

(iv) a Minister of the State or Territory;

otherwise than by or under a law of the State or Territory.

aggravated offence:

(a) in Subdivision B of Division 1 of Part 13—has the meaning given by section 196F; and

(b) in Subdivision B of Division 2 of Part 13—has the meaning given by section 211F; and

(c) in Subdivision B of Division 4 of Part 13—has the meaning given by section 254F.

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aircraft means an apparatus that can derive support in the atmosphere from the reactions of the air.

animal means any member, alive or dead, of the animal kingdom (other than a human being).

animal reproductive material means:

(a) an embryo, an egg or sperm of an animal; or

(b) any other part, or product, of an animal from which another animal could be produced.

Antarctic has the same meaning as in the *Antarctic Treaty (Environment Protection) Act 1980*.

Apia Convention means the Convention on Conservation of Nature in the South Pacific, done at Apia, Western Samoa, on 12 June 1976, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1990 No. 41.

approved conservation advice has the meaning given by subsection 266B(2).

article includes a substance or a mixture of substances.

artificially propagated, in relation to a plant or plant reproductive material, has the meaning given by section 527C.

assess an action includes assess the impacts that the action:

(a) has or will have; or

(b) is likely to have.

assessment report has the meaning given by subsection 130(2).

Australian aircraft has the meaning given by subsection 5(5).

Australian Biosphere reserve management principles has the meaning given by section 340.

Australian Heritage Council means the body established by the *Australian Heritage Council Act 2003*.

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Australian IUCN reserve management principles has the meaning given by subsection 348(1).

Australian jurisdiction has the meaning given by subsection 5(5).

Australian national has the meaning given by subsection 5(5).

Australian permanent resident has the meaning given by subsection 5(5).

Australian Ramsar management principles has the meaning given by section 335.

Australian vessel has the meaning given by subsection 5(5).

Australian Whale Sanctuary has the meaning given by subsection 225(2).

Australian World Heritage management principles has the meaning given by section 323.

authorisation process means a process set out in a law of the Commonwealth or a State or Territory under which actions are authorised.

authorised officer means:

(a) a warden; or

(b) an inspector.

baggage has the meaning given by section 443.

bilateral agreement has the meaning given by subsection 45(2).

bilaterally accredited authorisation process has the meaning given by subsection 46(2A).

bilaterally accredited management arrangement has the meaning given by subsection 46(2).

biodiversity means the variability among living organisms from all sources (including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part) and includes:

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(a) diversity within species and between species; and
(b) diversity of ecosystems.

Biodiversity Convention means the Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992, as amended and in force for Australia from time to time.

Note: The English text of this Convention is set out in Australian Treaty Series 1993 No. 32.

biological resources includes genetic resources, organisms, parts of organisms, populations and any other biotic component of an ecosystem with actual or potential use or value for humanity.

bioregional assessment, in relation to an area, means the scientific analysis of the ecology, hydrology and geology of the area for the purpose of assessing the potential direct and indirect impacts of unconventional gas development or large coal mining development on water resources in the area, including any impacts of associated salt production and/or salinity.

bioregional plan means a bioregional plan for a bioregion as mentioned in section 176.

Biosphere reserve has the meaning given by section 337.

Board means a Board established under section 377.

Bonn Convention means the Convention on the Conservation of Migratory Species of Wild Animals done at Bonn on 23 June 1979, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1991 No. 32.

bred in captivity, in relation to an animal or animal reproductive material, has the meaning given by section 527B.

CAMBA means the Agreement between the Government of Australia and the Government of the People's Republic of China for the protection of Migratory Birds and their Environment done

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at Canberra on 20 October 1986, as amended and in force for Australia from time to time.

Note: The English text of the Agreement is set out in Australian Treaty Series 1988 No. 22.

cetacean means a member of the sub-order Mysticeti or Odontoceti of the Order Cetacea, and includes:

(a) a part of such a member; and
(b) any animal reproductive material of such a member, or any part of such reproductive material; and
(c) any product derived from such a member; and
(d) the whole or part of the dead body of such a member; and
(e) any product derived from the dead body, or part of the dead body, of such a member.

CITES means the Convention on International Trade in Endangered Species of Wild Fauna and Flora done at Washington on 3 March 1973, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1976 No. 29.

CITES I species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix I to CITES.

CITES I specimen means a specimen that belongs to a CITES I species, where there is a notation in the list referred to in section 303CA that describes the specimen.

CITES II species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix II to CITES.

CITES II specimen means a specimen that belongs to a CITES II species, where there is a notation in the list referred to in section 303CA that describes the specimen.

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CITES III species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix III to CITES.

CITES III specimen means a specimen that belongs to a CITES III species, where there is a notation in the list referred to in section 303CA that describes the specimen.

CITES specimen means:

(a) a CITES I specimen; or

(b) a CITES II specimen; or

(c) a CITES III specimen.

civil penalty provision has the meaning given by section 482.

coastal sea of Australia or an external Territory has the same meaning as in subsection 15B(4) of the *Acts Interpretation Act 1901*.

coastal waters of a State or the Northern Territory has the meaning given by section 227.

commercial fishing activity has the meaning given by subsection 390SC(1A).

commissioner means a person holding an appointment under paragraph 107(1)(a).

Commonwealth agency means:

(a) a Minister; or

(b) a body corporate established for a public purpose by a law of the Commonwealth; or

(c) a body corporate established by a Minister otherwise than under a law of the Commonwealth; or

(d) a company in which the whole of the shares or stock, or shares or stock carrying more than one-half of the voting power, is or are owned by or on behalf of the Commonwealth; or

(e) a body corporate that is a subsidiary of:

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(i) a body or company referred to in paragraph (b), (c) or (d); or

(ii) a body corporate that, because of a previous application or previous applications of this paragraph, is taken to be a Commonwealth agency for the purposes of this definition; or

(f) a person holding, or performing the duties of:

(i) an office established by or under a law of the Commonwealth (except a judicial office or office of member of a tribunal); or

(ii) an appointment made under a law of the Commonwealth (except an appointment to a judicial office or office of member of a tribunal); or

(g) a person holding, or performing the duties of, an appointment made by the Governor-General, or by a Minister, otherwise than under a law of the Commonwealth;

but does not include:

(h) a person holding an office established by or under any of the following Acts, or holding an appointment made under any of them:

(i) the *Northern Territory (Self-Government) Act 1978*;

(ii) the *Norfolk Island Act 1979*;

(iii) the *Australian Capital Territory (Self-Government) Act 1988*; or

(i) any of the following:

(i) an Aboriginal Land Trust, or an Aboriginal Land Council, established under the *Aboriginal Land Rights (Northern Territory) Act 1976*;

(ii) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;

(iii) the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land and Waters (Jervis Bay Territory) Act 1986*; or

(j) a company prescribed by the regulations for the purposes of this paragraph.

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Commonwealth aircraft has the meaning given by section 403.

Commonwealth area has the meaning given by section 525.

Commonwealth Heritage criteria has the meaning given by subsection 341D(1).

Commonwealth Heritage List means the list referred to in section 341C.

Commonwealth Heritage management principles has the meaning given by section 341Y.

Commonwealth Heritage place has the meaning given by subsection 341C(3).

Commonwealth Heritage value has the meaning given by section 341D.

Commonwealth land has the meaning given by section 27.

Commonwealth marine area has the meaning given by section 24.

Commonwealth reserve means a reserve declared under Division 4 of Part 15.

Commonwealth ship has the meaning given by section 403.

components of biodiversity has the meaning given by subsection 171(3).

conservation agreement means an agreement made under section 305.

conservation dependent: a native species may be included in the ***conservation dependent*** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

conservation dependent species means a listed threatened species that is included in the conservation dependent category of the list referred to in section 178.

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conservation order means an order made under section 464 (with variations (if any) under section 466 or 469).

conservation zone means a Commonwealth area that is declared to be a conservation zone under Division 5 of Part 15.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

continental shelf means:

(a) the continental shelf (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories); or

(b) the Greater Sunrise special regime area.

continuation of a use of land, sea or seabed has the meaning given by section 43B.

control: a Commonwealth agency ***controls*** a place only if the agency has rights (whether arising under a law, lease, licence or otherwise) to:

(a) occupy or use the place; and

(b) take actions in relation to the place that could potentially have an impact on heritage values that the place may have.

controlled action has the meaning given by section 67.

controlling provision has the meaning given by section 67.

convict a person of an offence has a meaning affected by section 527.

copy, when used in relation to a warrant issued under section 409 or 416 (or a form of warrant completed under subsection 409A(6) or 416(6)), includes:

(a) a copy sent by fax or other electronic means; or

(b) a copy of a copy so sent.

country includes a place that is a territory, dependency or colony (however described) of a foreign country.

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critical habitat for a listed threatened species or a listed threatened ecological community has the meaning given by subsection 207A(4).

critically endangered:

(a) a native species may be included in the ***critically endangered*** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and

(b) an ecological community may be included in the ***critically endangered*** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

daily newspaper means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper is published, whether or not the newspaper is ordinarily published on other days.

declaration affected person has the meaning given by subsection 390SE(3).

declared commercial fishing activity has the meaning given by subsection 390SC(1).

declared Ramsar wetland has the meaning given by section 17.

declared State or Territory means a State or self-governing Territory that is declared by the Minister under section 505E.

declared World Heritage property has the meaning given by section 13.

designated proponent of an action means the person designated under Division 2 of Part 7 as the proponent of the action.

directed environmental audit has the meaning given by subsection 460(4).

Director means the Director of National Parks referred to in section 514A.

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Director of Biosecurity has the same meaning as in the *Biosecurity Act 2015*.

dory means:

(a) a vessel in relation to which a licence or other permission (however described and whether or not in force) has been granted under a law of the Commonwealth, a State or a Territory authorising the vessel to be used in association with a primary commercial fishing vessel; or

(b) a vessel that is used in association with a primary commercial fishing vessel.

Note: A dory might also be known as a tender commercial fishing vessel.

ecological character has the meaning given by subsection 16(3).

ecological community means the extent in nature in the Australian jurisdiction of an assemblage of native species that:

(a) inhabits a particular area in nature; and

(b) meets the additional criteria specified in the regulations (if any) made for the purposes of this definition.

ecologically sustainable use of natural resources means use of the natural resources within their capacity to sustain natural processes while maintaining the life-support systems of nature and ensuring that the benefit of the use to the present generation does not diminish the potential to meet the needs and aspirations of future generations.

ecosystem means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

eligible seizable item means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

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endangered:

(a) a native species may be included in the ***endangered*** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and

(b) an ecological community may be included in the ***endangered*** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

environment includes:

(a) ecosystems and their constituent parts, including people and communities; and

(b) natural and physical resources; and

(c) the qualities and characteristics of locations, places and areas; and

(d) heritage values of places; and

(e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).

environmental authorisation has the meaning given by section 43A.

environmental authority has the meaning given by subsection 458(4).

environmental law means:

(a) this Act; or

(b) the regulations; or

(c) the *Great Barrier Reef Marine Park Act 1975*; or

(d) regulations made under the *Great Barrier Reef Marine Park Act 1975*.

environmental penalty provision means:

(a) a civil penalty provision under this Act; or

(b) a civil penalty provision under the *Great Barrier Reef Marine Park Act 1975*.

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evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

evidential material has the meaning given by subsection 406(2).

exclusive economic zone means the exclusive economic zone (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories).

executing officer, in relation to a warrant, means:

(a) the authorised officer named in the warrant as being responsible for executing the warrant; or

(b) if that authorised officer does not intend to be present at the execution of the warrant—another authorised officer whose name has been written in the warrant by the authorised officer so named; or

(c) another authorised officer whose name has been written in the warrant by the authorised officer last named in the warrant.

executive officer of a body corporate has the meaning given by section 493.

extinct: a native species may be included in the ***extinct*** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

extinct in the wild: a native species may be included in the ***extinct in the wild*** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

Federal Court means the Federal Court of Australia.

Federal Register of Legislation means the Federal Register of Legislation established under the *Legislation Act 2003*.

fish has the same meaning as in the *Fisheries Management Act 1991*.

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Fisheries Minister means the Minister administering the *Fisheries Management Act 1991*.

fishing has the same meaning as in the *Fisheries Management Act 1991*.

fishing activity has the meaning given by subsection 390SC(2).

fishing concession has the same meaning as in the *Fisheries Management Act 1991*.

foreign whaling vessel has the meaning given by subsection 236(5).

frisk search has the meaning given by subsection 413(3).

genetic resources means any material of plant, animal, microbial or other origin that contains functional units of heredity and that has actual or potential value for humanity.

goods has the meaning given by section 443.

Great Barrier Reef Marine Park means the Great Barrier Reef Marine Park established under the *Great Barrier Reef Marine Park Act 1975*.

Great Barrier Reef Marine Park Authority means the Great Barrier Reef Marine Park Authority established by the *Great Barrier Reef Marine Park Act 1975*.

Greater Sunrise special regime area has the meaning given by subsection 5(5).

habitat means the biophysical medium or media:

(a) occupied (continuously, periodically or occasionally) by an organism or group of organisms; or

(b) once occupied (continuously, periodically or occasionally) by an organism, or group of organisms, and into which organisms of that kind have the potential to be reintroduced.

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heritage value of a place includes the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians.

holder means:

(a) in the case of a permit issued under Chapter 5—the person to whom the permit was issued or transferred, as the case may be; or

(b) in the case of an approval under Part 9—the person named in the approval under paragraph 133(2)(c).

impact has the meaning given by section 527E.

important cetacean habitat area means an area declared, by a declaration in force under subsection 228A(1), to be an important cetacean habitat area.

Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development means the Committee established by section 505C.

indigenous heritage value of a place means a heritage value of the place that is of significance to indigenous persons in accordance with their practices, observances, customs, traditions, beliefs or history.

indigenous people's land has the meaning given by subsection 363(3).

indigenous person has the meaning given by subsection 363(4).

indigenous tradition has the meaning given by section 201.

inspector means:

(a) a person appointed as an inspector under section 396;

(b) a person who is an inspector because of section 397; or

(c) a person who is an inspector because of an arrangement entered into under section 398.

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interested person has the meaning given by section 475.

interfere with a cetacean has the meaning given by subsection 229B(4).

IUCN category has the meaning given by subsection 346(1).

JAMBA means the Agreement between the Government of Japan and the Government of Australia for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment done at Tokyo on 6 February 1974, as amended and in force for Australia from time to time.

Note: The English text of the Agreement is set out in Australian Treaty Series 1981 No. 6.

jointly managed reserve has the meaning given by subsection 363(5).

Kakadu National Park has the meaning given by subsection 387(3).

Kakadu region has the meaning given by subsection 386(1).

keep a cetacean or member of a listed threatened species, listed migratory species, listed marine species or listed threatened ecological community means:

(a) in the case of a cetacean, or a species of animal or community of animals—have charge or possession of the cetacean or member, either in captivity or in a domesticated state; and

(b) in the case of a species of plant or community of plants—have possession of the member.

key threatening process means a threatening process included in the list referred to in section 183.

land has the meaning given by subsection 345(2).

land council for indigenous people's land has the meaning given by subsection 363(2).

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large coal mining development means any coal mining activity that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity):

(a) in its own right; or

(b) when considered with other developments, whether past, present or reasonably foreseeable developments.

large-scale disposal facility for radioactive waste has a meaning affected by subsection 22(2).

list includes a list containing no items.

listed marine species means a marine species included in the list referred to in section 248.

listed migratory species means a migratory species included in the list referred to in section 209.

listed threatened ecological community means an ecological community included in the list referred to in section 181.

listed threatened species means a native species included in the list referred to in section 178.

List of Overseas Places of Historic Significance to Australia means the record referred to in section 390K.

live animal includes animal reproductive material.

live plant includes plant reproductive material.

longfin mako shark means the listed migratory species with the common name longfin mako shark and the scientific name *Isurus paucus*.

magistrate means a magistrate who is remunerated by salary or otherwise, and includes a Judge, or acting Judge, of the Local Court of the Northern Territory.

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management arrangement includes:

(a) a management plan; and

(b) a regime; and

(c) a policy.

master of a foreign whaling vessel has the meaning given by subsection 236(5).

matter protected by a provision of Part 3 has the meaning given by section 34.

member includes:

(a) in relation to a species of animal (other than a species of cetacean):

(i) any part of an animal of the species; and

(ii) any animal reproductive material of an animal of the species, or any part of such reproductive material; and

(iii) the whole or any part of the dead body of an animal of the species; and

(b) in relation to a species of plant:

(i) any part of a plant of the species; and

(ii) any plant reproductive material of a plant of the species, or any part of such reproductive material; and

(iii) the whole or any part of a plant of the species that has died; and

(c) in relation to an ecological community:

(i) any part of an animal or plant of the community; and

(ii) any animal reproductive material of an animal, or plant reproductive material of a plant, of the community, or any part of such animal reproductive material or plant reproductive material; and

(iii) the whole or any part of an animal or plant of the community that has died.

migration zone has the same meaning as in the *Migration Act 1958*.

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migratory species has the meaning given by subsection 209(8).

mineral has the meaning given by subsection 355(3).

mining operations has the meaning given by subsection 355(2).

monitoring power relating to premises has the meaning given by section 407.

monitoring warrant has the meaning given by section 409.

national of a foreign country has the meaning given by subsection 5(5).

National Heritage criteria has the meaning given by subsection 324D(1).

National Heritage List means the list referred to in section 324C.

National Heritage management principles has the meaning given by section 324Y.

National Heritage place has the meaning given by subsection 324C(3).

National Heritage value has the meaning given by section 324D.

native amphibian means an amphibian of a native species.

native animal means an animal of a native species.

native bird means a bird of a native species.

native mammal means a mammal of a native species.

native plant means a plant of a native species.

native reptile means a reptile of a native species.

native species means a species:

(a) that is indigenous to Australia or an external Territory; or

(b) that is indigenous to the seabed of the coastal sea of Australia or an external Territory; or

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(c) that is indigenous to the continental shelf; or
(d) that is indigenous to the exclusive economic zone; or
(e) members of which periodically or occasionally visit:
(i) Australia or an external Territory; or
(ii) the exclusive economic zone; or
(f) that was present in Australia or an external Territory before 1400.

Note: A reference to Australia or an external Territory includes a reference to the coastal sea of Australia or the Territory. See section 15B of the *Acts Interpretation Act 1901*.

nuclear action has the meaning given by subsection 22(1).

nuclear installation has the meaning given by subsection 22(1).

occupier of premises means the person apparently in charge of the premises.

officer assisting, in relation to a warrant, means:
(a) an authorised officer who is assisting in executing the warrant; or
(b) a person who is not an authorised officer, but who has been authorised by the relevant executing officer to assist in executing the warrant.

officer of Customs has the same meaning as it has in the *Customs Act 1901*.

ordinary search has the meaning given in subsection 414(3).

organism includes:
(a) a virus; and
(b) the reproductive material of an organism; and
(c) an organism that has died.

place includes:
(a) a location, area or region or a number of locations, areas or regions; and

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(b) a building or other structure, or group of buildings or other structures (which may include equipment, furniture, fittings and articles associated or connected with the building or structure, or group of buildings or structures); and

(c) in relation to the protection, maintenance, preservation or improvement of a place—the immediate surroundings of a thing in paragraph (a) or (b).

plant means a member, alive or dead, of the plant kingdom or of the fungus kingdom, and includes a part of a plant and plant reproductive material.

plant reproductive material means:

(a) a seed or spore of a plant; or

(b) a cutting from a plant; or

(c) any other part, or product, of a plant from which another plant can be produced.

population of a species or ecological community means an occurrence of the species or community in a particular area.

porbeagle shark means the listed migratory species with the common name porbeagle shark and the scientific name *Lamna nasus*.

precautionary principle has the meaning given by subsection 391(2).

premises includes a place, vehicle, vessel and aircraft.

prescribed waters means waters in respect of which regulations made for the purposes of section 226 are in force.

primary commercial fishing vessel means:

(a) a vessel in relation to which a licence or other permission (however described and whether or not in force) has been granted under a law of the Commonwealth, a State or a Territory authorising the vessel to be used to take fish for commercial purposes; or

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(b) a vessel that is used to take fish for commercial purposes.

principles of ecologically sustainable development has a meaning affected by section 3A.

progeny includes:

(a) in relation to an animal—any animal reproductive material of that animal or of any progeny of that animal; and

(b) in relation to a plant—any plant reproductive material of that plant or of any progeny of that plant; and

(c) in relation to a live animal that is animal reproductive material—any animal resulting from that material or any progeny of such animal; and

(d) in relation to a live plant that is plant reproductive material—any plant resulting from that material or any progeny of such plant.

To avoid doubt, a reference in this Act to ***progeny*** of an animal or a plant includes a reference to any descendant of that animal or plant.

radioactive waste has the meaning given by subsection 22(1).

Ramsar Convention means the Convention on Wetlands of International Importance especially as Waterfowl Habitat done at Ramsar, Iran, on 2 February 1971, as amended and in force for Australia from time to time.

Note: The English Text of the Convention is set out in Australian Treaty Series 1975 No. 48.

range of a species means the area where members of the species live, feed, breed or visit periodically or regularly.

ranger means a person holding an appointment as a ranger under Part 17.

recovery plan means a plan made or adopted under section 269A.

regulated live specimen has the meaning given by section 303EA.

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regulated native specimen has the meaning given by section 303DA.

relevant impacts of an action has the meaning given by section 82.

remediation determination means a determination, as in force from time to time, made under section 480D.

remediation order means an order, as in force from time to time, made under section 480A.

reprocessing has the meaning given by subsection 22(1).

Scientific Committee means the Threatened Species Scientific Committee established by section 502.

seabed has the meaning given by subsection 345(2).

Secretary means the Secretary of the Department that:

(a) deals with the matter to which the provision containing the reference relates; and

(b) is administered by the Minister administering the provision.

seized has a meaning affected by section 406B.

self-governing Territory means:

(a) the Australian Capital Territory; or

(b) the Northern Territory.

shortfin mako shark means the listed migratory species with the common name shortfin mako shark and the scientific name *Isurus oxyrinchus*.

species means a group of biological entities that:

(a) interbreed to produce fertile offspring; or

(b) possess common characteristics derived from a common gene pool;

and includes:

(c) a sub-species; and

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(ca) for the purposes of Part 13A—a distinct population of such biological entities; and

(d) except for the purposes of Part 13A—a distinct population of such biological entities that the Minister has determined, under section 517, to be a species for the purposes of this Act.

In this definition, ***the purposes of Part 13A***:

(a) include the purposes of the definitions of ***CITES I species***, ***CITES II species*** and ***CITES III species***; and

(b) do not include determining the meaning of the expression ***listed threatened species*** when used in Part 13A.

specific environmental authorisation has the meaning given by section 43A.

specimen has the meaning given by section 527A.

spent nuclear fuel has the meaning given by subsection 22(1).

subsidiary of a body corporate has a meaning affected by section 526.

sub-species means a geographically separate population of a species, being a population that is characterised by morphological or biological differences from other populations of that species.

take, except in Part 13A, includes:

(a) in relation to an animal—harvest, catch, capture and trap; and

(b) in relation to a plant—harvest, pick, gather and cut.

Note: For the meaning of ***take*** in Part 13A, see section 303BC.

taxon means any taxonomic category (for example, a species or a genus), and includes a particular population.

terms of reference:

(a) in relation to an inquiry under Division 7 of Part 8—has the meaning given by paragraph 107(1)(b); and

(b) in relation to an assessment under Division 3 of Part 15B—has the meaning given by paragraph 390SH(1)(b).

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territorial sea means the territorial sea (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories).

threat abatement plan means a plan made or adopted under section 270B.

threatening process has the meaning given by subsection 188(3).

trade:

(a) when used in the context of a reference to a member of a listed threatened species, listed migratory species, listed marine species or listed threatened ecological community—includes:

(i) buy the member, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or

(ii) sell the member, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or

(iii) export the member from Australia or an external Territory or import it into Australia or an external Territory; or

(iv) cause or allow any of the acts referred to in subparagraph (i), (ii) or (iii) to be done; or

(b) when used in the context of a reference to a cetacean (not being a reference that covers a cetacean because a cetacean is a member referred to in paragraph (a))—has the meaning given by subsection 229B(4).

traditional owners of indigenous people's land has the meaning given by subsection 368(4).

treat a cetacean has the meaning given by subsection 229D(3).

Uluṟu-Kata Tjuṯa National Park has the meaning given by subsection 344(3).

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Uluru region has the meaning given by subsection 386(2).

unconventional gas development means any activity involving unconventional gas production that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity):

(a) in its own right; or

(b) when considered with other developments, whether past, present or reasonably foreseeable developments.

unconventional gas production means extraction, recovery, or intentional release, (whether by drilling, hydraulic fracturing or other means) of gas from:

(a) coal seams or beds; or

(b) layers of shale rock; or

(c) tight gas reservoirs; or

(d) any other sources prescribed by the regulations.

usage right has the meaning given by subsection 350(7).

vehicle includes a hovercraft.

vessel means a ship, boat, raft or pontoon or any other thing capable of carrying persons or goods through or on water and includes a floating structure and hovercraft.

vulnerable:

(a) a native species may be included in the ***vulnerable*** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and

(b) an ecological community may be included in the ***vulnerable*** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

warden means a person holding an appointment as a warden under Part 17.

warrant premises means premises in relation to which a warrant is in force.

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water resource has the same meaning as in the *Water Act 2007*.

wetland has the same meaning as in the Ramsar Convention.

whale watching has the meaning given by section 238.

wildlife means:

(a) an animal; or

(b) a specimen derived from an animal; or

(c) a plant; or

(d) a specimen derived from a plant.

wildlife conservation plan means a plan of a kind referred to in section 285 that has been made or adopted under that section.

World Heritage Convention means the Convention for the Protection of the World Cultural and Natural Heritage done at Paris on 23 November 1972, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1975 No. 47.

World Heritage List means the list kept under that title under Article 11 of the World Heritage Convention.

world heritage values of a property has the meaning given by subsection 12(3).

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Schedule 1—Provisions relating to detention of suspected foreign offenders

Note: See section 433B.

Part 1—Preliminary

Division 1—Objects of this Schedule

1 Main objects of this Schedule

(1) This Schedule has 3 main objects.

(2) The first main object is to provide for the detention (***environment detention***) in Australia or a Territory of persons who:

(a) are reasonably suspected by an authorised officer of having committed an offence:

(i) involving the use of a foreign vessel; or

(ii) in the Australian jurisdiction but outside the migration zone; and

(b) are not Australian citizens or Australian residents;

for a limited period for the purposes of determining whether to charge them with the offence.

(3) The second main object is to provide for persons in environment detention to be searched, screened, given access to facilities for obtaining legal advice, and identified.

(4) The third main object is to facilitate the transition of persons from environment detention to immigration detention under the *Migration Act 1958*:

(a) by providing for the things mentioned in subclause (3) to be done in a way corresponding to the way that Act provides for those things to be done to persons in immigration detention; and

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(b) by authorising the disclosure of personal information about individuals who are or have been in environment detention to persons, agencies and organisations responsible for holding the individuals in immigration detention, for the purpose of the immigration detention and welfare of the individuals.

Note: The enforcement visa of a person who is neither an Australian citizen nor an Australian resident ceases to have effect under the *Migration Act 1958* when the person ceases to be in environment detention, so that Act requires the person to be taken into immigration detention.

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Division 2—Definitions

2 Definitions

In this Schedule, unless the contrary intention appears:

approved officer means:

(a) an authorised officer (other than a person who is an authorised officer because of subsection 397(3)); or

(b) a detention officer;

who is approved under Division 4 for the purposes of the provision in which the expression occurs.

Australian resident means:

(a) a person who holds a permanent visa (as defined in the *Migration Act 1958*) that is in effect; or

(b) a New Zealand citizen who is usually resident in Australia or a Territory and who holds a special category visa (as defined in the *Migration Act 1958*) that is in effect; or

(c) any other person who is usually resident in Australia or a Territory and whose continued presence in Australia or a Territory is not subject to a limitation as to time imposed by law.

authorised Migration Act officer means an authorised officer, within the meaning of the *Migration Act 1958*.

detainee means a person detained under Part 2.

detention means detention under Part 2.

detention officer means a person appointed under clause 3 to be a detention officer.

foreign vessel means a vessel that is not an Australian vessel.

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Division 3—Appointment etc. of detention officers

3 Minister may appoint persons to be detention officers

(1) The Minister may, by instrument, appoint one or more persons (except persons who are authorised officers) to be detention officers.

Note: Authorised officers have the same powers as detention officers, as well as other powers, so there is no reason for authorised officers to be appointed as detention officers.

(2) An instrument appointing persons to be detention officers:

(a) may identify the persons by reference to a class; and

(b) may provide for persons to be appointed when they become members of the class at or after a time specified in the instrument.

4 Detention officers subject to directions

(1) A detention officer is, in the exercise of his or her powers, and the performance of his or her duties, under this Schedule, subject to the directions given by the Minister.

(2) A direction given by the Minister under subclause (1) is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction. See regulations made for the purposes of paragraph 44(2)(b) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

5 Detention officer etc. not liable to certain actions

(1) A detention officer, or a person assisting a detention officer in the exercise of powers under this Schedule or the regulations, is not liable to an action, suit or proceeding for or in respect of anything done in good faith or omitted to be done in good faith in the

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Clause 5

exercise or purported exercise of any power conferred by this Schedule or by regulations made for the purposes of this Schedule.

Note: Section 498A makes similar provision for authorised officers and their assistants.

(2) However, subclause (1) does not affect a contractual liability of a detention officer or person assisting a detention officer.

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Division 4—Approval of authorised officers and detention officers

6 The Secretary may approve authorised officers and detention officers

(1) The Secretary may, by instrument, approve one or more authorised officers and/or detention officers for the purposes of a specified provision of this Schedule, from among authorised officers and/or detention officers who have successfully completed minimum training prescribed by the regulations.

(2) An instrument approving authorised officers and/or detention officers:
  (a) may identify them by reference to a class; and
  (b) may provide for them to be approved when they become members of the class at or after a time specified in the instrument.

7 Persons who are authorised officers for purposes of the *Migration Act 1958* are taken to be approved for this Schedule

(1) A person who:
  (a) is an authorised officer or a detention officer; and
  (b) is an authorised Migration Act officer for a provision of the *Migration Act 1958* listed in column 2 of an item of the table;

is, while he or she meets the conditions in paragraphs (a) and (b), taken to be approved under clause 6 for the purposes of the provision of this Schedule listed in column 3 of the item.

Corresponding provisions of the *Migration Act 1958* and this Schedule

Column 1 Item	Column 2 Provision of the *Migration Act 1958*	Column 3 Provision of this Schedule
1	Subsection 252(4)	Subclause 15(3)

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Clause 7

Corresponding provisions of the *Migration Act 1958* and this Schedule		
Column 1 **Item**	**Column 2** **Provision of the *Migration Act 1958***	**Column 3** **Provision of this Schedule**
2	Paragraph 252(6)(a)	Paragraph 15(5)(a)
3	Subparagraph 252(6)(b)(i)	Subparagraph 15(5)(b)(i)
4	Subsection 252AA(1)	Subclause 16(1)
5	Subsection 252A(1)	Subclause 17(1)
6	Subsection 252C(1)	Subclause 19(1)
7	Subsection 252D(2)	Subclause 20(2)
8	Subsection 252G(3)	Subclause 22(3)
9	Section 261AA	Clause 28
10	Subsection 261AE(1)	Subclause 32(1)
11	Subsection 261AE(3)	Subclause 32(3)
12	Section 261AG	Clause 34
13	Section 261AJ	Clause 37
14	Subsection 261AK(1) (except paragraph (a))	Subclause 38(1) (except paragraph (a))
15	Subsection 261AK(3)	Subclause 38(3)

Limits on approval

(2) However, the person is not taken to be approved to carry out an identification test in relation to which section 5D of the *Migration Act 1958* provides that the person is not an authorised officer (for the purposes of that Act).

Note: This is relevant to items 9 to 15 of the table in subclause (1).

Persons specified by Secretary not approved

(3) The Secretary may, by instrument, specify that the person is not taken to be approved:

(a) for the purposes of the provision of this Schedule; or

(b) for the purposes of carrying out under this Schedule identification tests of a type specified under

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section 5D of the *Migration Act 1958* in relation to the person.

The instrument has effect according to its terms, despite subclause (1).

(4) An instrument under subclause (3) may specify one or more persons by reference to their being members of a specified class at or after a time specified in the instrument.

(5) An instrument made under subclause (3) is not a legislative instrument.

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Part 2—Detaining suspected foreign offenders

Division 1—Initial detention by an authorised officer

8 Power to detain

(1) An authorised officer may detain a person in Australia or a Territory for the purposes of determining during the period of detention whether or not to charge the person with an offence against an environmental law, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, if the authorised officer has reasonable grounds to believe that the person:

(a) is not an Australian citizen or an Australian resident; and

(b) either or both of the following:

(i) was on a foreign vessel when it was used or otherwise involved in the commission of the offence;

(ii) committed the offence in the Australian jurisdiction but outside the migration zone.

(2) Subclause (1) does not authorise an authorised officer to use more force in detaining a person than is reasonably necessary.

9 Relationship with Part IC of the *Crimes Act 1914*

(1) Part IC of the *Crimes Act 1914* applies in relation to the detainee while detained under this Part as if:

(a) he or she were a protected suspect for a Commonwealth offence for the purposes of that Part; and

(b) an authorised officer were an investigating official for the purposes of that Part.

(2) Subclause (1) does not affect the operation of Division 2 of Part IC of the *Crimes Act 1914* as it applies of its own force in relation to a person who is lawfully arrested.

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Division 2—Continued detention by a detention officer

10 Detention officer may detain person already detained by authorised officer

(1) For the purposes of facilitating an authorised officer determining whether or not to charge a person with an offence against an environmental law, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, a detention officer may detain the person in Australia or a Territory if the detention officer has reasonable grounds to believe that the person:

(a) has been detained by an authorised officer under Division 1; and

(b) has been presented, while detained by that authorised officer, to a detention officer for detention by a detention officer.

(2) However, the detention officer may not detain the person if the detention officer has reasonable grounds to believe that the person has ceased to be in detention since the last time the person was detained by an authorised officer under Division 1.

(3) Subclause (1) does not authorise a detention officer to use more force in detaining a person than is reasonably necessary.

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Division 3—Detention on behalf of an authorised officer or detention officer

11 Detention on behalf of an authorised officer or detention officer

(1) A person is taken to be detained by an authorised officer or detention officer under this Part while the person is held, on behalf of the authorised officer or detention officer, in any of the following:

(a) a prison or remand centre;

(b) a police station or watch house;

(c) a hospital or other place where the person is receiving medical treatment;

(d) another place approved by the Minister in writing;

(e) a vessel.

(2) This clause has effect even while the authorised officer or detention officer is not present where the person is held on behalf of the authorised officer or detention officer.

(3) An approval of a place by the Minister is not a legislative instrument.

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Division 4—Moving detainees

12 Power to move detainees

(1) An authorised officer or detention officer may:

(a) take a detainee in Australia to another place in Australia or to a place in an external Territory; and

(b) take a detainee in an external Territory to another place in the Territory or to a place in Australia or another Territory.

(2) Subclause (1) does not authorise an authorised officer or detention officer to use more force than is reasonably necessary to take the detainee to the place.

(3) In exercising the power under subclause (1), the authorised officer or detention officer must have regard to all matters that he or she considers relevant, including:

(a) the administration of justice; and

(b) the welfare of the detainee.

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Division 5—End of detention

13 End of detention

A detainee must be released from detention:

(a) as soon as an authorised officer or detention officer knows or reasonably believes that the detainee is an Australian citizen or an Australian resident; or

(b) at the time the detainee is brought before a magistrate following a decision to charge the detainee with an offence referred to in subclause 8(1); or

(c) at the time a decision is made not to charge the detainee with an offence referred to in that subclause; or

(d) at the end of 168 hours after the detention began;

whichever occurs first.

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Division 6—Offence of escaping from detention

14 Escape from detention

(1) A person commits an offence if:
  (a) the person is in detention; and
  (b) the person escapes from that detention.

(2) The offence is punishable on conviction by imprisonment for up to 2 years.

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Part 3—Searching and screening detainees and screening their visitors

Division 1—Searches of detainees

15 Searches of detainees

(1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched.

(2) The purposes for which a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may be searched under this clause are as follows:

(a) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a weapon or other thing capable of being used to inflict bodily injury or to help the detainee to escape from detention;

(b) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a document or other thing that is, or may be, evidence of:

(i) an offence against an environmental law; or

(ii) an offence against section 6 of the *Crimes Act 1914* relating to an offence described in subparagraph (i).

(3) If, in the course of a search under this clause, a weapon or other thing referred to in paragraph (2)(a), or a document or other thing referred to in paragraph (2)(b), is found, an approved officer:

(a) may take possession of the weapon, document or other thing; and

(b) may retain the weapon, document or other thing for such time as he or she thinks necessary for the purposes of this Act, the *Great Barrier Reef Marine Park Act 1975* or the *Migration Act 1958*.

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(4) This clause does not authorise an approved officer, or another person conducting a search pursuant to subclause (5), to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.

(5) A search under this clause of a detainee, and the detainee's clothing, must be conducted by:

(a) an approved officer of the same sex as the detainee; or

(b) in a case where an approved officer of the same sex as the detainee is not available to conduct the search—any other person who is of the same sex and:

(i) is requested by an approved officer; and

(ii) agrees;

to conduct the search.

(6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an approved officer, conducts a search under this clause if the person acts in good faith and does not contravene subclause (7).

(7) An approved officer or other person who conducts a search under this clause must not use more force, or subject a detainee to greater indignity, than is reasonably necessary in order to conduct the search.

(8) To avoid doubt, a search of a detainee may be conducted under this clause irrespective of whether a screening procedure is conducted in relation to the detainee under clause 16 or a strip search of the detainee is conducted under clause 17.

Note: This clause corresponds closely to section 252 of the *Migration Act 1958*.

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Division 2—Screening of detainees

16 Power to conduct a screening procedure

(1) A screening procedure in relation to a detainee, other than a detainee to whom clause 23 applies, may be conducted by an approved officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:
  (a) to inflict bodily injury; or
  (b) to help the detainee, or any other detainee, to escape from detention.

(2) An approved officer who conducts a screening procedure under this clause must not use greater force, or subject the detainee to greater indignity, than is reasonably necessary in order to conduct the screening procedure.

(3) This clause does not authorise an approved officer to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.

(4) To avoid doubt, a screening procedure may be conducted in relation to a detainee under this clause irrespective of whether a search of the detainee is conducted under clause 15 or 17.

(5) In this clause:

conducting a screening procedure, in relation to a detainee, means:
  (a) causing the detainee to walk, or to be moved, through screening equipment; or
  (b) passing hand-held screening equipment over or around the detainee or around things in the detainee's possession; or

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(c) passing things in the detainee's possession through screening equipment or examining such things by X-ray.

screening equipment means a metal detector or similar device for detecting objects or particular substances.

Note: This clause corresponds closely to section 252AA of the *Migration Act 1958*.

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Division 3—Strip searches of detainees

17 Power to conduct a strip search

(1) A strip search of a detainee, other than a detainee to whom clause 23 applies, may be conducted by an approved officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:

(a) to inflict bodily injury; or

(b) to help the detainee, or any other detainee, to escape from detention.

Note: Clause 18 sets out rules for conducting a strip search under this clause.

(2) A ***strip search*** of a detainee means a search of the detainee, of his or her clothing or of a thing in his or her possession. It may include:

(a) requiring the detainee to remove some or all of his or her clothing; and

(b) an examination of that clothing and of the detainee's body (but not of the detainee's body cavities).

(3) A strip search of a detainee may be conducted by an approved officer only if:

(a) an authorised officer or detention officer suspects on reasonable grounds that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause (1); and

(b) the authorised officer, or detention officer, referred to in paragraph (a) suspects on reasonable grounds that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing; and

(c) the strip search is authorised as follows:

(i) if the detainee is at least 18—the Secretary, the Director, the Chief Executive Officer of the Great Barrier Reef Marine Park Authority or an SES Band 3

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employee in the Department (who is not the authorised officer referred to in paragraphs (a) and (b) nor the approved officer conducting the strip search), authorises the strip search because he or she is satisfied that there are reasonable grounds for those suspicions;

(ii) if the detainee is at least 10 but under 18—a magistrate orders the strip search because he or she is satisfied that there are reasonable grounds for those suspicions.

(4) An authorised officer or detention officer may form a suspicion on reasonable grounds for the purposes of paragraph (3)(a) on the basis of:

(a) a search conducted under clause 15 (whether by that authorised officer or detention officer or by another authorised officer or detention officer); or

(b) a screening procedure conducted under clause 16 (whether by that authorised officer or detention officer or by another authorised officer or detention officer); or

(c) any other information that is available to the authorised officer or detention officer.

(5) An authorisation of a strip search given for the purposes of subparagraph (3)(c)(i):

(a) may be given by telephone, fax or other electronic means; and

(b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.

(6) A record made under paragraph (5)(b) is not a legislative instrument.

(7) A failure to comply with paragraph (5)(b) does not affect the validity of a strip search conducted on the basis of that authorisation.

(8) The power to authorise a strip search under subparagraph (3)(c)(i) cannot be delegated to any other person.

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(9) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.

(10) The magistrate need not accept the power conferred.

(11) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

(12) To avoid doubt, a strip search of a detainee may be conducted under this clause irrespective of whether a search of the detainee is conducted under clause 15 or a screening procedure is conducted in relation to the detainee under clause 16.

(13) In this clause:

SES Band 3 employee means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Note: This clause corresponds closely to section 252A of the *Migration Act 1958*.

18 Rules for conducting a strip search

(1) A strip search of a detainee under clause 17:

(a) must not subject the detainee to greater indignity than is reasonably necessary to conduct the strip search; and

(b) must be conducted in a private area; and

(c) must be conducted by an approved officer of the same sex as the detainee; and

(d) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person who is of the opposite sex to the detainee; and

(e) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the strip search; and

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(f) must not be conducted on a detainee who is under 10; and

(g) if the detainee is at least 10 but under 18, or is incapable of managing his or her affairs—must be conducted in the presence of:

(i) the detainee's parent or guardian if that person is in detention with the detainee and is readily available at the same place; or

(ii) if that is not acceptable to the detainee or subparagraph (i) does not apply—another person (other than an approved officer) who is capable of representing the detainee's interests and who, as far as is practicable in the circumstances, is acceptable to the detainee; and

(h) subject to subclause (4), if the detainee is at least 18, and is not incapable of managing his or her affairs—must be conducted in the presence of another person (if any) nominated by the detainee, if that other person is readily available at the same place as the detainee, and willing to attend the strip search within a reasonable time; and

(i) must not involve a search of the detainee's body cavities; and

(j) must not involve the removal of more items of clothing, or more visual inspection, than the approved officer conducting the search believes on reasonable grounds to be necessary to determine whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause 17(1); and

(k) must not be conducted with greater force than is reasonably necessary to conduct the strip search.

(2) Paragraphs (1)(d) and (e) do not apply to a parent or guardian, or person present because of subparagraph (1)(g)(ii), if the detainee has no objection to that person being present.

(3) Paragraphs (1)(d) and (e) do not apply to a person nominated by the detainee under paragraph (1)(h) to attend the strip search.

(4) Neither:

(a) a detainee's refusal or failure to nominate a person under paragraph (1)(h) within a reasonable time; nor

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(b) a detainee's inability to nominate a person under that paragraph who is readily available at the same place as the detainee and willing to attend the strip search within a reasonable time;

prevents a strip search being conducted.

(5) A strip search of a detainee may be conducted with the assistance of another person if the approved officer conducting the strip search considers that to be necessary for the purposes of conducting it. That person must not be of the opposite sex to the detainee unless:

(a) the person is a medical practitioner; and

(b) a medical practitioner of the same sex as the detainee is not available within a reasonable time.

(6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an approved officer, assists in conducting a strip search if the person acts in good faith and does not contravene this clause.

(7) A detainee must be provided with adequate clothing if during or as a result of a strip search any of his or her clothing is:

(a) damaged or destroyed; or

(b) retained under clause 19.

Note: This clause corresponds closely to section 252B of the *Migration Act 1958*.

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Division 4—Keeping of things found by screening or strip search of detainees

19 Possession and retention of certain things obtained during a screening procedure or strip search

(1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing:

(a) might provide evidence of the commission of an offence against an environmental law, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence; or

(b) is forfeited or forfeitable to the Commonwealth.

(2) A weapon or other thing described in subclause 16(1) or 17(1) that is found in the course of conducting a screening procedure under clause 16 or a strip search under clause 17 is forfeited to the Commonwealth.

(3) An approved officer must not return a thing that is forfeited or forfeitable to the Commonwealth. Instead, the approved officer must, as soon as practicable, give a thing that is forfeited under subclause (2) to a constable (within the meaning of the *Crimes Act 1914*).

Note: See sections 450 and 451 of this Act, which deal with court-ordered forfeiture and how forfeited items are to be dealt with.

(4) An approved officer must take reasonable steps to return anything that is not forfeited or forfeitable but is retained under subclause (1) to the person from whom it was taken, or to the owner if that person is not entitled to possess it, if one of the following happens:

(a) it is decided that the thing is not to be used in evidence;

(b) the period of 60 days after the approved officer takes possession of the thing ends.

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(5) However, the approved officer does not have to take those steps if:

(a) in a paragraph (4)(b) case:

(i) proceedings in respect of which the thing might provide evidence have been instituted before the end of the 60 day period and have not been completed (including an appeal to a court in relation to those proceedings); or

(ii) the approved officer may retain the thing because of an order under clause 21; or

(b) in any case—the approved officer is otherwise authorised (by a law, or an order of a court or a tribunal, of the Commonwealth or a State or Territory) to retain, destroy or dispose of the thing.

Note: This clause corresponds closely to section 252C of the *Migration Act 1958*.

20 Approved officer may apply for a thing to be retained for a further period

(1) This clause applies if an approved officer has taken possession of a thing referred to in subclause 19(4) and proceedings in respect of which the thing might provide evidence have not commenced before the end of:

(a) 60 days after the approved officer takes possession of the thing; or

(b) a period previously specified in an order of a magistrate under clause 21.

(2) The approved officer may apply to a magistrate for an order that the approved officer may retain the thing for a further period.

(3) Before making the application, the approved officer must:

(a) take reasonable steps to discover which persons' interests would be affected by the retention of the thing; and

(b) if it is practicable to do so, notify each person who the approved officer believes to be such a person of the proposed application.

(4) A notice under paragraph (3)(b) is not a legislative instrument.

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Note: This clause corresponds closely to section 252D of the *Migration Act 1958*.

21 Magistrate may order that thing be retained

(1) The magistrate may order that the approved officer who made an application under clause 20 may retain the thing if the magistrate is satisfied that it is necessary for the approved officer to do so:

(a) for the purposes of an investigation as to whether an offence has been committed; or

(b) to enable evidence of an offence to be secured for the purposes of a prosecution.

(2) The order must specify the period for which the approved officer may retain the thing.

(3) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.

(4) The magistrate need not accept the power conferred.

(5) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

Note: This clause corresponds closely to section 252E of the *Migration Act 1958*.

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Division 5—Screening detainees' visitors

22 Powers concerning entry to premises where detainee is detained

(1) An authorised officer or detention officer may request that a person about to enter premises where a detainee is in detention do one or more of the following:

(a) walk through screening equipment;

(b) allow an authorised officer or detention officer to pass hand-held screening equipment over or around the person or around things in the person's possession;

(c) allow things in the person's possession to pass through screening equipment or to be examined by X-ray.

(2) ***Screening equipment*** means a metal detector or similar device for detecting objects or particular substances.

(3) If an approved officer suspects on reasonable grounds that a person about to enter premises where a detainee is in detention has in the person's possession a thing that might:

(a) endanger the safety of the detainees, staff or other persons on the premises; or

(b) disrupt the order or security arrangements on the premises;

the approved officer may request that the person do some or all of the things in subclause (4) for the purpose of finding out whether the person has such a thing. A request may be made whether or not a request is also made to the person under subclause (1).

(4) An approved officer may request that the person do one or more of the following:

(a) allow the approved officer to inspect the things in the person's possession;

(b) remove some or all of the person's outer clothing such as a coat, jacket or similar item;

(c) remove items from the pockets of the person's clothing;

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(d) open a thing in the person's possession, or remove the thing's contents, to allow the approved officer to inspect the thing or its contents;

(e) leave a thing in the person's possession, or some or all of its contents, in a place specified by the approved officer if he or she suspects on reasonable grounds that the thing or its contents are capable of concealing something that might:

(i) endanger the safety of the detainees, staff or other persons on the premises; or

(ii) disrupt the order or security arrangements on the premises.

(5) A person who leaves a thing (including any of its contents) in a place specified by an approved officer is entitled to its return when the person leaves the premises.

(6) However, if possession of the thing, or any of those contents, by the person is unlawful under a Commonwealth, State or Territory law applying to the premises:

(a) the thing or the contents must not be returned to the person; and

(b) an approved officer must, as soon as practicable, give the thing or the contents to a constable (within the meaning of the *Crimes Act 1914*).

(7) A person who is about to enter premises where a detainee is detained may be refused entry if the person does not comply with a request under this clause.

Note: This clause corresponds closely to section 252G of the *Migration Act 1958*.

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Division 6—Law applying to detainee in State or Territory prison etc.

23 Detainees held in State or Territory prisons or remand centres

(1) This clause applies to a detainee if:

(a) the detainee is held in detention in a prison or remand centre of a State or Territory; and

(b) a law of that State or Territory confers a power to search persons, or things in the possession of persons, serving sentences or being held in the prison or remand centre.

(2) To the extent that the State or Territory law confers that power, or affects the exercise of that power, it applies to the detainee as though it were a law of the Commonwealth.

(3) Clauses 16 and 17 do not apply to a detainee to whom this clause applies.

Note: This clause corresponds closely to section 252F of the *Migration Act 1958*.

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Part 4—Detainees' rights to facilities for obtaining legal advice etc.

24 Detainee may have access to certain advice, facilities etc.

The person responsible for detention of a detainee must afford to him or her all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to his or her detention.

Note: This clause corresponds to section 256 of the *Migration Act 1958*.

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Part 5—Identifying detainees

Division 1—Preliminary

25 Definitions

In this Part, unless the contrary intention appears:

identification test means a test carried out in order to obtain a personal identifier.

incapable person means a person who is incapable of understanding the general nature and effect of, and purposes of, a requirement to provide a personal identifier.

independent person means a person (other than an authorised officer, detention officer or approved officer) who:

(a) is capable of representing the interests of a non-citizen who is providing, or is to provide, a personal identifier; and
(b) as far as practicable, is acceptable to the non-citizen who is providing, or is to provide, the personal identifier; and
(c) if the non-citizen is a minor—is capable of representing the minor's best interests.

minor means a person who is less than 18 years old.

non-citizen means a person who is not an Australian citizen.

personal identifier has the meaning given by clause 26.

Note: The definitions of expressions in this clause correspond closely to definitions of those expressions in section 5 of the *Migration Act 1958*.

26 Meaning of *personal identifier*

(1) In this Part:

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personal identifier means any of the following (including any of the following in digital form):

(a) fingerprints or handprints of a person (including those taken using paper and ink or digital livescanning technologies);

(b) a measurement of a person's height and weight;

(c) a photograph or other image of a person's face and shoulders;

(d) an audio or a video recording of a person (other than a video recording under clause 37);

(e) an iris scan;

(f) a person's signature;

(g) any other identifier prescribed by the regulations, other than an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*.

(2) Before the Governor-General makes regulations for the purposes of paragraph (g) of the definition of ***personal identifier*** in subclause (1) prescribing an identifier, the Minister must be satisfied that:

(a) obtaining the identifier would not involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*; and

(b) the identifier is an image of, or a measurement or recording of, an external part of the body; and

(c) obtaining the identifier will promote one or more of the purposes referred to in subclause (3).

(3) The purposes are:

(a) to assist in the identification of, and to authenticate the identity of, any person who can be required under this Schedule to provide a personal identifier; and

(b) to assist in identifying, in the future, any such person; and

(c) to enhance the ability to identify non-citizens who have a criminal history in matters relating to the environment; and

(d) to combat document and identity fraud in matters relating to the environment; and

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(e) to complement anti-people smuggling measures; and

(f) to inform the governments of foreign countries of the identity of non-citizens who have been detained under, or charged with offences against, an environmental law; and

(g) to facilitate international cooperation to combat activities that involve a breach of the laws of Australia or of a foreign country.

Note: This clause corresponds closely to section 5A of the *Migration Act 1958*.

27 Limiting the types of identification tests that approved officers may carry out

(1) The Secretary may, in an instrument authorising an authorised officer or detention officer as an approved officer for the purposes of carrying out identification tests under this Part, specify the types of identification tests that the approved officer may carry out.

(2) Such an approved officer is not an approved officer in relation to carrying out an identification test that is not of a type so specified.

Note: This clause corresponds closely to section 5D of the *Migration Act 1958*.

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Division 2—Identification of detainees

Subdivision A—Provision of personal identifiers

28 Detainees must provide personal identifiers

(1) A non-citizen in detention must (other than in the prescribed circumstances) provide to an approved officer one or more personal identifiers.

Note: A person who is an Australian citizen, or is a non-citizen but an Australian resident, may be in detention but must be released as soon as an authorised officer or detention officer knows or reasonably believes the person is an Australian citizen or resident. See clause 13.

(2) An approved officer must not require, for the purposes of subclause (1), a detainee to provide a personal identifier other than any of the following (including any of the following in digital form):

(a) fingerprints or handprints of the detainee (including those taken using paper and ink or digital livescanning technologies);

(b) a measurement of the detainee's height and weight;

(c) a photograph or other image of the detainee's face and shoulders;

(d) the detainee's signature;

(e) any other personal identifier of a type prescribed for the purposes of this paragraph.

Note: Division 3 sets out further restrictions on the personal identifiers that minors and incapable persons can be required to provide.

(3) The one or more personal identifiers are to be provided by way of one or more identification tests carried out by the approved officer in accordance with this Division.

Note 1: Subject to certain restrictions, clause 32 allows reasonable force to be used to carry out identification tests under this Division.

Note 2: This clause corresponds closely to section 261AA of the *Migration Act 1958*.

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Clause 29

29 Approved officers must require and carry out identification tests

(1) The approved officer must, other than in the circumstances prescribed for the purposes of subclause 28(1):

(a) require the non-citizen to provide one or more personal identifiers, of the type or types prescribed, by way of one or more identification tests carried out by the approved officer; and

(b) carry out the one or more identification tests on the non-citizen.

(2) However:

(a) if the types of identification tests that the approved officer may carry out are specified under clause 27—each identification test must be of a type so specified; and

(b) each identification test must be carried out in accordance with Subdivision B; and

(c) unless the approved officer has reasonable grounds to believe that the non-citizen is not a minor or an incapable person—each identification test must be carried out in accordance with the additional requirements of Division 3.

Note: Subclauses (1) and (2) correspond closely to section 261AB of the *Migration Act 1958*.

(3) If:

(a) the approved officer is authorised because of clause 7 (which effectively treats as approved officers for the purposes of certain provisions of this Schedule certain persons who are authorised Migration Act officers for the purposes of certain provisions of the *Migration Act 1958*); and

(b) an instrument under section 5D of that Act specifies the types of identification test the authorised Migration Act officer may carry out;

paragraph (2)(a) of this clause has effect as if the specified types (except any specified under subclause 7(3) in relation to the authorised Migration Act officer) had been specified under clause 27.

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30 Information to be provided before carrying out identification tests

(1) Before carrying out an identification test, the approved officer must:

(a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and

(b) inform the non-citizen of such other matters as are specified in the regulations.

(2) For the purposes of subclause (1), the approved officer ***informs*** the non-citizen of a matter if the approved officer informs the non-citizen of the matter, through an interpreter if necessary, in a language (including sign language or braille) in which the non-citizen is able to communicate with reasonable fluency.

(3) The approved officer may comply with this clause by giving to the non-citizen, in accordance with the regulations, a form setting out the information specified in the regulations. However, the information must be in a language (including braille) in which the non-citizen is able to communicate with reasonable fluency.

(4) A form mentioned in subclause (3) is not a legislative instrument.

Note: This clause corresponds closely to section 261AC of the *Migration Act 1958*.

Subdivision B—How identification tests are carried out

31 General rules for carrying out identification tests

An identification test under this Division:

(a) must be carried out in circumstances affording reasonable privacy to the non-citizen; and

(b) if the non-citizen so requests and it is practicable to comply with the request—must not be carried out in the presence or

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view of a person who is of the opposite sex to the non-citizen; and

(c) must not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the identification test or is not required or permitted by another provision of this Schedule; and

(d) must not involve the removal of more clothing than is necessary for carrying out the test; and

(e) must not involve more visual inspection than is necessary for carrying out the test; and

(f) if the test is one of 2 or more identification tests to be carried out on the non-citizen—must be carried out at the same time as the other identification tests, if it is practicable to do so.

Note: This clause corresponds closely to section 261AD of the *Migration Act 1958*.

32 Use of force in carrying out identification tests

When use of force is permitted

(1) Subject to subclause (2) and clause 33, an approved officer, or a person authorised under clause 34 to help the approved officer, may use reasonable force:

(a) to enable the identification test to be carried out; or

(b) to prevent the loss, destruction or contamination of any personal identifier or any meaningful identifier derived from the personal identifier.

However, this clause does not authorise the use of force against a minor or an incapable person, or if the personal identifier in question is a person's signature.

(2) The approved officer or person must not use force unless:

(a) the non-citizen required to provide the personal identifier in question has refused to allow the identification test to be carried out; and

(b) all reasonable measures to carry out the identification test without the use of force have been exhausted; and

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(c) the use of force in carrying out the identification test is authorised under subclause (4).

Applications for authorisation to use force

(3) An approved officer may apply to a senior authorising officer (who is not an approved officer referred to in subclause (1)) for an authorisation to use force in carrying out the identification test.

Authorisation to use force

(4) The senior authorising officer may authorise the use of force in carrying out the identification test if he or she is reasonably satisfied that:
   (a) the non-citizen required to provide the personal identifier in question has refused to allow the identification test to be carried out; and
   (b) all reasonable measures to carry out the identification test without the use of force have been exhausted.

(5) An authorisation under subclause (4):
   (a) may be given by telephone, fax or other electronic means; and
   (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.

(6) A record made under paragraph (5)(b) is not a legislative instrument.

(7) A failure to comply with paragraph (5)(b) does not affect the validity of an identification test carried out on the basis of that authorisation.

(8) The power to give an authorisation under subclause (4) cannot be delegated to any other person.

Definition

(9) In this clause:

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senior authorising officer means an authorised officer, or detention officer, whom the Secretary has authorised, or who is included in a class of authorised officers or detention officers whom the Secretary has authorised, to perform the functions of a senior authorising officer under this clause.

Note: This clause corresponds closely to section 261AE of the *Migration Act 1958*.

33 Identification tests not to be carried out in cruel, inhuman or degrading manner etc.

For the purposes of this Schedule, the carrying out of the identification test is not of itself taken:

(a) to be cruel, inhuman or degrading; or

(b) to be a failure to treat a person with humanity and with respect for human dignity.

However, nothing in this Schedule authorises the carrying out of the identification test in a cruel, inhuman or degrading manner, or in a manner that fails to treat a person with humanity and with respect for human dignity.

Note: This clause corresponds closely to section 261AF of the *Migration Act 1958*.

34 Approved officer may get help to carry out identification tests

An approved officer may ask another approved officer or an authorised officer or detention officer to help him or her to carry out the identification test, and the other person may give that help.

Note: This clause corresponds closely to section 261AG of the *Migration Act 1958*.

35 Identification tests to be carried out by approved officer of same sex as non-citizen

If the non-citizen requests that the identification test be carried out by an approved officer of the same sex as the non-citizen, the test

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must only be carried out by an approved officer of the same sex as the non-citizen.

Note: This clause corresponds closely to section 261AH of the *Migration Act 1958*.

36 Independent person to be present

The identification test must be carried out in the presence of an independent person if:

(a) force is used in carrying out the identification test; or

(b) both of the following apply:

(i) the non-citizen requests that an independent person be present while the identification test is being carried out;

(ii) an independent person is readily available at the same place as the non-citizen and is willing to attend the test within a reasonable time.

Note: This clause corresponds closely to section 261AI of the *Migration Act 1958*.

37 Recording of identification tests

(1) An approved officer may video record the carrying out of the identification test.

(2) If the carrying out of the identification test is not video recorded, the approved officer may decide that the identification test must be carried out in the presence of an independent person.

Note: This clause corresponds closely to section 261AJ of the *Migration Act 1958*.

38 Retesting

When retesting is permitted

(1) If:

(a) an approved officer has carried out an identification test (the ***earlier test***) on a non-citizen in accordance with this

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Division (including a test authorised under subclause (4)); and

(b) either:

(i) a personal identifier that is provided as a result of the earlier test being carried out is unusable; or

(ii) an approved officer, authorised officer or detention officer is not satisfied about the integrity of that personal identifier;

the approved officer who carried out the earlier test or another approved officer may require the non-citizen to provide the personal identifier again, and may carry out the test again in accordance with this Division, if:

(c) the requirement is made while the earlier test is being carried out or immediately after it was carried out; or

(d) carrying out the test again is authorised under subclause (4).

(2) If the non-citizen is required under subclause (1) to provide the personal identifier again, the non-citizen is taken, for the purposes of this Division, not to have provided the personal identifier as a result of the earlier test being carried out.

Applications for authorisation to retest

(3) An approved officer may apply for an authorisation to carry out the test again. The application is to be made to:

(a) if the earlier test was not a test authorised under subclause (4)—a senior authorising officer (who is not an approved officer, authorised officer or detention officer referred to in subclause (1)); or

(b) if the earlier test was a test authorised under subclause (4) by a senior authorising officer—the Secretary, the Director, the Chief Executive Officer of the Great Barrier Reef Marine Park Authority or an SES Band 3 employee in the Department (who is not an approved officer, authorised officer or detention officer referred to in subclause (1)).

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Authorisation to retest

(4) The senior authorising officer, Secretary, Director, Chief Executive Officer or SES Band 3 employee (as the case requires) may authorise the test to be carried out again if:

(a) he or she is reasonably satisfied that the personal identifier that is provided as a result of the earlier test being carried out is unusable; or

(b) he or she is not reasonably satisfied about the integrity of that personal identifier.

(5) An authorisation under subclause (4):

(a) may be given by telephone, fax or other electronic means; and

(b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.

(6) A record made under paragraph (5)(b) is not a legislative instrument.

(7) A failure to comply with paragraph (5)(b) does not affect the validity of an identification test carried out on the basis of that authorisation.

(8) The power to give an authorisation under subclause (4) cannot be delegated to any other person.

Use of force

(9) An authorisation under subclause (4) does not authorise the use of force in carrying out an identification test.

Note: See clause 32 on the use of force in carrying out identification tests.

Effect of refusing to authorise retesting

(10) If an application for an authorisation to carry out an identification test again on a non-citizen is refused, the non-citizen is taken, for the purposes of this Schedule, to have complied with any

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requirement under this Schedule to provide the personal identifier in question.

Definitions

(11) In this clause:

senior authorising officer means an authorised officer, or detention officer, who:

(a) has been authorised, or is included in a class of authorised officers or detention officers who have been authorised, by the Secretary to perform the functions of a senior authorising officer under this clause; and

(b) is not the Secretary or an SES Band 3 employee in the Department.

SES Band 3 employee means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Note: This clause corresponds closely to section 261AK of the *Migration Act 1958*.

Subdivision C—Obligations relating to video recordings of identification tests

39 Definitions

In this Subdivision, unless the contrary intention appears:

permitted provision, of a video recording, has the meaning given by subclause 42(2).

provide, in relation to a video recording, includes provide access to the recording.

related document means a document that contains information, derived from a video recording made under clause 37 or from a copy of such a recording, from which the identity of the individual

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on whom the identification test in question was carried out is apparent or can reasonably be ascertained.

video recording means a video recording made under clause 37 or a copy of such a recording, and includes a related document.

Note: This clause corresponds closely to section 261AKA of the *Migration Act 1958*.

40 Accessing video recordings

(1) A person commits an offence if:
  (a) the person accesses a video recording; and
  (b) the person is not authorised under clause 41 to access the video recording for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years.

(2) This clause does not apply if the access is through the provision of a video recording that is a permitted provision.

Note 1: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: This clause corresponds closely to section 261AKB of the *Migration Act 1958*.

41 Authorising access to video recordings

(1) The Secretary may, in writing, authorise a specified person, or any person included in a specified class of persons, to access:
  (a) all video recordings; or
  (b) a specified video recording, or video recordings of a specified kind.

(2) The Secretary must specify in an authorisation under this clause, as the purpose or purposes for which access is authorised, one or more of the following purposes:
  (a) providing a video recording to another person in accordance with this Subdivision;

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(b) administering or managing the storage of video recordings;
(c) making a video recording available to the person to whom it relates;
(d) modifying related documents in order to correct errors or ensure compliance with appropriate standards;
(e) any purpose connected with determining whether a civil or criminal liability has arisen from a person carrying out or helping to carry out an identification test under this Schedule;
(f) complying with laws of the Commonwealth or the States or Territories;
(g) disclosing personal information under clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).

(3) However, the Secretary must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of:
(a) investigating an offence against a law of the Commonwealth or a State or Territory (other than an offence involving whether an identification test was carried out lawfully); or
(b) prosecuting a person for such an offence;
if the identifying information in question relates to a personal identifier of a prescribed type.

Note: This clause corresponds closely to section 261AKC of the *Migration Act 1958*.

42 Providing video recordings

(1) A person commits an offence if:
(a) the person's conduct causes a video recording to be provided to another person; and
(b) the provision of the recording is not a permitted provision of the recording.

Penalty: Imprisonment for 2 years.

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(2) A ***permitted provision*** of a video recording is a provision of the recording that:

(a) is for the purpose of administering or managing the storage of video recordings; or

(b) is for the purpose of making the video recording in question available to the non-citizen to whom it relates; or

(c) is for the purpose of a proceeding, before a court or tribunal, relating to the non-citizen to whom the video recording in question relates; or

(d) is for any purpose connected with determining whether a civil or criminal liability has arisen from a person carrying out or helping to carry out an identification test under this Schedule; or

(e) is for the purpose of an investigation by the Information Commissioner under the *Privacy Act 1988* or the Ombudsman relating to carrying out an identification test; or

(f) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of this Schedule relating to carrying out an identification test; or

(g) takes place with the written consent of the non-citizen to whom the video recording in question relates; or

(h) is a disclosure authorised by clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).

(3) However, a provision of a video recording is not a permitted provision of the recording if:

(a) it constitutes a disclosure of identifying information relating to a personal identifier of a prescribed type; and

(b) it is for the purpose of:

(i) investigating an offence against a law of the Commonwealth or a State or Territory (other than an offence involving whether an identification test was carried out lawfully); or

(ii) prosecuting a person for such an offence.

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Note: This clause corresponds closely to section 261AKD of the *Migration Act 1958*.

43 Unauthorised modification of video recordings

A person commits an offence if:

(a) the person causes any unauthorised modification of a video recording; and

(b) the person intends to cause the modification; and

(c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years.

44 Unauthorised impairment of video recordings

A person commits an offence if:

(a) the person causes any unauthorised impairment of:

(i) the reliability of a video recording; or

(ii) the security of the storage of a video recording; or

(iii) the operation of a system by which a video recording is stored; and

(b) the person intends to cause the impairment; and

(c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years.

45 Meanings of *unauthorised modification* and *unauthorised impairment* etc.

(1) In this Subdivision:

(a) modification of a video recording; or

(b) impairment of the reliability of a video recording; or

(c) impairment of the security of the storage of a video recording; or

(d) impairment of the operation of a system by which a video recording is stored;

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by a person is unauthorised if the person is not entitled to cause that modification or impairment.

(2) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.

(3) For the purposes of an offence under this Subdivision, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.

(4) For the purposes of subclause (1), if:

(a) a person causes any modification or impairment of a kind mentioned in that subclause; and

(b) the person does so under a warrant issued under the law of the Commonwealth, a State or a Territory;

the person is entitled to cause that modification or impairment.

Note: This clause corresponds closely to section 261AKG of the *Migration Act 1958*.

46 Destroying video recordings

A person commits an offence if:

(a) the person is the person who has day-to-day responsibility for the system under which a video recording is stored; and

(b) the person fails physically to destroy the recording, and all copies of the recording, within 10 years after it was made.

Penalty: Imprisonment for 2 years.

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Division 3—Identification of minors and incapable persons

47 Minors

Minors less than 15 years old

(1) A non-citizen who is less than 15 years old must not be required under this Schedule to provide a personal identifier other than a personal identifier consisting of:
  (a) a measurement of the non-citizen's height and weight; or
  (b) the non-citizen's photograph or other image of the non-citizen's face and shoulders.

Persons present while identification test is carried out

(2) If a non-citizen who is a minor provides a personal identifier, in accordance with a requirement under this Schedule, by way of an identification test carried out by an approved officer, the test must be carried out in the presence of:
  (a) a parent or guardian of the minor; or
  (b) an independent person.

(3) However, if the Minister administering the *Immigration (Guardianship of Children) Act 1946* is the guardian of the minor, the test must be carried out in the presence of an independent person other than that Minister.

Note: This clause corresponds closely to subsections 261AL(1), (5) and (6) of the *Migration Act 1958*.

48 Incapable persons

Incapable persons

(1) A non-citizen who is an incapable person must not be required under this Schedule to provide a personal identifier other than a personal identifier consisting of:
  (a) a measurement of the non-citizen's height and weight; or

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(b) the non-citizen's photograph or other image of the non-citizen's face and shoulders.

Persons present while identification test is carried out

(2) If a non-citizen who is an incapable person provides a personal identifier, in accordance with a requirement under this Schedule, by way of an identification test carried out by an approved officer, the test must be carried out in the presence of:

(a) a parent or guardian of the incapable person; or

(b) an independent person.

Note: This clause corresponds closely to subsections 261AM(1) and (4) of the *Migration Act 1958*.

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Division 4—Obligations relating to detainees' identifying information

Subdivision A—Preliminary

49 Definitions

In this Division:

disclose, in relation to identifying information that is a personal identifier provided under clause 28, includes provide unauthorised access to the personal identifier.

Note: Clause 52 deals with authorised access to identifying information.

identifying information means the following:

(a) any personal identifier provided under clause 28;

(b) any meaningful identifier derived from any such personal identifier;

(c) any record of a result of analysing any such personal identifier or any meaningful identifier derived from any such personal identifier;

(d) any other information, derived from any such personal identifier, from any meaningful identifier derived from any such personal identifier or from any record of a kind referred to in paragraph (c), that could be used to discover a particular person's identity or to get information about a particular person.

permitted disclosure has the meaning given by subclauses 53(2) and (3).

unauthorised impairment has the meaning given by clause 57.

unauthorised modification has the meaning given by clause 57.

Note: The definitions of expressions in this clause correspond closely to definitions of those expressions in section 336A of the *Migration Act 1958*.

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50 Application

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to all offences against this Division.

Note: This clause corresponds closely to section 336B of the *Migration Act 1958*.

Subdivision B—Accessing identifying information

51 Accessing identifying information

(1) A person commits an offence if:

(a) the person accesses identifying information; and

(b) the person is not authorised under clause 52 to access the identifying information for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years.

(1A) This clause does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

(2) This clause does not apply if the access is through a disclosure that is a permitted disclosure.

Note 1: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: This clause corresponds closely to section 336C of the *Migration Act 1958*.

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52 Authorising access to identifying information

(1) The Secretary may, in writing, authorise a specified person, or any person included in a specified class of persons, to access identifying information of the kind specified in the authorisation.

(2) The Secretary must specify in an authorisation under this clause, as the purpose or purposes for which access is authorised, one or more of the following purposes:

(a) one or more of the purposes set out in subclause 26(3);

(b) disclosing identifying information in accordance with this Division;

(c) administering or managing the storage of identifying information;

(d) making identifying information available to the person to whom it relates;

(e) modifying identifying information to enable it to be matched with other identifying information;

(f) modifying identifying information in order to correct errors or ensure compliance with appropriate standards;

(g) the purposes of this Act;

(h) complying with laws of the Commonwealth or the States or Territories;

(i) disclosing personal information under clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).

(3) However, the Secretary must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of:

(a) investigating an offence against a law of the Commonwealth or a State or Territory; or

(b) prosecuting a person for such an offence;

if the identifying information in question relates to a personal identifier of a prescribed type.

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Note: This clause corresponds closely to section 336D of the *Migration Act 1958*.

Subdivision C—Disclosing identifying information

53 Disclosing identifying information

(1) A person commits an offence if:

(a) the person's conduct causes disclosure of identifying information; and

(b) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 2 years.

(1A) This clause does not apply if the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

(2) A ***permitted disclosure*** is a disclosure that:

(a) is for the purpose of data-matching in order to:

(i) identify, or authenticate the identity of, a person; or

(ii) facilitate the processing of persons entering or departing from Australia; or

(iii) identify non-citizens who have a criminal history, who are of character concern (as defined in the *Migration Act 1958*) or who are of national security concern; or

(iv) combat document and identity fraud in immigration matters; or

(v) ascertain whether an applicant for a protection visa had sufficient opportunity to avail himself or herself of protection before arriving in Australia; or

(vi) inform the governments of foreign countries of the identity of non-citizens who are, or are to be, removed from Australia; or

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(b) is for the purpose of administering or managing the storage of identifying information; or

(c) is authorised under clause 54 and is for the purpose, or one or more of the purposes, for which the disclosure is authorised; or

(d) is for the purpose of making the identifying information in question available to the person to whom it relates; or

(da) is to an agency of the Commonwealth or of a State or Territory in order to verify that a person is an Australian citizen or holds a visa of a particular class; or

(e) takes place under an arrangement entered into with an agency of the Commonwealth, or with a State or Territory or an agency of a State or Territory, for the exchange of identifying information; or

(ea) is reasonably necessary for the enforcement of the criminal law of the Commonwealth or of a State or Territory; or

(eb) is required by or under a law of the Commonwealth or of a State or Territory; or

(f) is for the purpose of a proceeding, before a court or tribunal, relating to the person to whom the identifying information in question relates; or

(g) is for the purpose of an investigation by the Information Commissioner or the Ombudsman relating to action taken by the Department; or

(h) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of this Schedule relating to:

(i) carrying out an identification test; or

(ii) requiring the provision of a personal identifier; or

(ha) is a disclosure of an audio or a video recording for the purposes of:

(i) this Act or the regulations; and

(ii) transcribing or translating the recording, or conducting language analysis or accent analysis of the recording; or

(i) takes place with the written consent of the person to whom the identifying information in question relates; or

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(j) is a disclosure authorised by clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).

(3) However, a disclosure is not a permitted disclosure if:

(a) it is a disclosure of identifying information relating to a personal identifier of a prescribed type; and

(b) it is for the purpose of:

(i) investigating an offence against a law of the Commonwealth or a State or Territory; or

(ii) prosecuting a person for such an offence.

Note: This clause corresponds closely to section 336E of the *Migration Act 1958*.

54 Authorising disclosure of identifying information to foreign countries etc.

(1) The Secretary may, in writing, authorise a specified authorised officer or detention officer, any authorised officer or detention officer included in a specified class of authorised officers or detention officers, or an Agency (as defined in the *Public Service Act 1999*) prescribed by the regulations, to disclose identifying information of the kind specified in the authorisation to one or more of the following:

(a) one or more specified foreign countries;

(b) one or more specified bodies each of which is:

(i) a police force or police service of a foreign country; or

(ii) a law enforcement body of a foreign country; or

(iii) a border control body of a foreign country;

(c) one or more specified international organisations, or specified organisations of foreign countries, that are responsible for matters relating to the environment;

(d) one or more prescribed bodies of a foreign country, of the Commonwealth or of a State or Territory;

(e) one or more prescribed international organisations.

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(2) The Secretary must specify in the authorisation, as the purpose or purposes for which disclosure is authorised, one or more of the purposes set out in subclause 26(3).

Note: This clause corresponds closely to subsections 336F(1) and (2) of the *Migration Act 1958*.

Subdivision D—Modifying and impairing identifying information

55 Unauthorised modification of identifying information

A person commits an offence if:

(a) the person causes any unauthorised modification of identifying information; and

(b) the person intends to cause the modification; and

(c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years.

Note: This clause corresponds closely to section 336G of the *Migration Act 1958*.

56 Unauthorised impairment of identifying information

A person commits an offence if:

(a) the person causes any unauthorised impairment of:

(i) the reliability of identifying information; or

(ii) the security of the storage of identifying information; or

(iii) the operation of a system by which identifying information is stored; and

(b) the person intends to cause the impairment; and

(c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years.

Note: This clause corresponds closely to section 336H of the *Migration Act 1958*.

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57 Meanings of *unauthorised modification* and *unauthorised impairment* etc.

(1) In this Division:

(a) modification of identifying information; or

(b) impairment of the reliability of identifying information; or

(c) impairment of the security of the storage of identifying information; or

(d) impairment of the operation of a system by which identifying information is stored;

by a person is unauthorised if the person is not entitled to cause that modification or impairment.

(2) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.

(3) For the purposes of an offence under this Division, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.

(4) For the purposes of subclause (1), if:

(a) a person causes any modification or impairment of a kind mentioned in that subclause; and

(b) the person does so under a warrant issued under the law of the Commonwealth, a State or a Territory;

the person is entitled to cause that modification or impairment.

Note: This clause corresponds closely to section 336J of the *Migration Act 1958*.

Subdivision E—Retaining identifying information

58 Identifying information may be indefinitely retained

Identifying information may be indefinitely retained.

Note: This clause corresponds closely to paragraph 336L(1)(a) of the *Migration Act 1958*, because under this Schedule identifying

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information will always be about someone who is or has been in detention.

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Part 6—Disclosure of detainees' personal information

59 Disclosure of detainees' personal information

(1) For the purposes described in subclause (2), an agency or organisation that is or has been responsible for the detention of an individual may disclose personal information about the individual to an agency, or organisation, that is or will be responsible for:

(a) taking the individual into immigration detention; or

(b) keeping the individual in immigration detention; or

(c) causing the individual to be kept in immigration detention; or

(d) the removal of the individual.

(2) The purposes are:

(a) the immigration detention of the individual; and

(b) the removal of the individual; and

(c) the welfare of the individual while in immigration detention or being removed.

(3) In this clause:

agency has the same meaning as in the *Privacy Act 1988*.

immigration detention has the same meaning as in the *Migration Act 1958*.

organisation has the same meaning as in the *Privacy Act 1988*.

personal information has the same meaning as in the *Privacy Act 1988*.

removal has the same meaning as in the *Migration Act 1958*.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Environment Protection and Biodiversity Conservation Act 1999	91, 1999	16 July 1999	16 July 2000 (s 2(2))	
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Sch 8 and 9 (item 1): 16 July 2000 (s 2(1))	Sch 9 (item 1)
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 422, 423): 16 July 2000 (s 2(3))	—
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (item 172): 15 July 2001 (s 2(3))	s 4–14
Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001	82, 2001	11 July 2001	Sch 1(items 1–82): 11 Jan 2002 (s 2(3)) Sch 1 (items 83–86): 11 July 2001 (s 2(1)(b))	Sch 1 (items 70–82)
Regional Forest Agreements Act 2002	30, 2002	5 Apr 2002	Sch 1: 3 May 2002 (s 2(1) item 3)	—
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 1 (items 15, 16, 18): 16 July 2000 (s 2(1) items 10, 11, 13) Sch 1 (item 17): 11 Jan 2002 (s 2(1) item 12)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Enhancement Act 2003	41, 2003	3 June 2003	Sch 3 (items 31, 32): 16 July 2000 (s 2(1) item 21) Sch 3 (item 42): 3 June 2003 (s 2(1) item 1)	Sch 3 (item 42)
Australian Heritage Council (Consequential and Transitional Provisions) Act 2003	86, 2003	23 Sept 2003	Sch 1 (item 2): 1 Jan 2004 (s 2(1) item 2)	—
Environment and Heritage Legislation Amendment Act (No. 1) 2003	88, 2003	23 Sept 2003	Sch 1 and 3: 1 Jan 2004 (s 2(1) items 2, 4 and gaz 2003, No. GN47) Sch 2: awaiting commencement (s 2(1) item 3) Remainder: 23 Sept 2003 (s 2(1) items 1, 5)	Sch 1 (items 8, 24, 25), Sch 3 (items 1A, 1) and Sch 4 (item 1G)
as amended by				
Environment and Heritage Legislation Amendment Act (No. 1) 2006	165, 2006	12 Dec 2006	Sch 1 (items 846, 847): 19 Feb 2007 (s 2(1) item 15 and F2007L00411)	—
Aboriginal and Torres Strait Islander Commission Amendment Act 2005	32, 2005	22 Mar 2005	Sch 4 (item 23): 24 Mar 2005 (s 2(1) item 4)	—
Administrative Appeals Tribunal Amendment Act 2005	38, 2005	1 Apr 2005	Sch 1 (item 207): 16 May 2005 (s 2(1) item 6)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 1 (items 13–15): 16 July 2000 (s 2(1) item 9)	—
Offshore Petroleum (Repeals and Consequential Amendments) Act 2006	17, 2006	29 Mar 2006	Sch 2 (item 21): 1 July 2008 (s 2(1) item 2)	—
Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006	125, 2006	4 Nov 2006	Sch 2 (item 97): 1 July 2007 (s 2(1) item 2)	—
Environment and Heritage Legislation Amendment Act (No. 1) 2006	165, 2006	12 Dec 2006	Sch 1 (items 1–604, 606–762, 764–780, 783–835): 19 Feb 2007 (s 2(1) items 2–4, 7–9) Sch 1 (item 605): 1 Jan 2007 (s 2(1) item 2) Sch 1 (item 763): 15 Jan 2007 (s 2(1) item 4) Sch 1 (item 781): 1 July 2022 (s 2(1) item 5) Sch 1 (item 782): awaiting commencement (s 2(1) item 6) Sch 2: 12 Dec 2006 (s 2(1) item 16)	Sch 2

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 2 (item 14): 19 Feb 2007 (s 2(1) item 50) Sch 2 (item 15): 12 Dec 2006 (s 2(1) item 51)	—
Migration Legislation Amendment (Information and Other Measures) Act 2007	63, 2007	15 Apr 2007	Sch 1 (items 1–15, 60, 61): 1 May 2007 (s 2(1) item 2)	Sch 1 (items 60, 61)
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 1 (items 21–26): 19 Feb 2007 (s 2(1) items 13–18)	—
Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008	117, 2008	21 Nov 2008	Sch 3 (item 14): 22 Nov 2008 (s 2(1) item 4)	—
Great Barrier Reef Marine Park and Other Legislation Amendment Act 2008	125, 2008	25 Nov 2008	Sch 3 (items 1, 2): 26 Nov 2008 (s 2(1) item 2) Sch 4 (items 1–37, 42–44) and Sch 5 (items 1–87): 25 Nov 2009 (s 2(1) item 3)	Sch 4 (items 42–44)
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 1 (item 25) and Sch 5 (item 47): 1 Mar 2010 (s 2(1) items 2, 31) Sch 5 (item 137): 1 Mar 2010 (s 2(1) item 38)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 5 (items 32, 33), Sch 6 (items 43–48) and Sch 7: 1 Nov 2010 (s 2(1) item 7)	Sch 7
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 55): 1 Jan 2011 (s 2(1) items 3, 5)	—
Environment Protection and Biodiversity Conservation Amendment (Recreational Fishing for Mako and Porbeagle Sharks) Act 2010	107, 2010	14 July 2010	15 July 2010 (s 2)	—
Territories Law Reform Act 2010	139, 2010	10 Dec 2010	Sch 1 (items 62–65): 11 Dec 2010 (s 2(1) item 2)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 7 (item 54): 19 Apr 2011 (s 2(1) item 18)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 551–562) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Act 2012	131, 2012	19 Sept 2012	19 Sept 2012 (s 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (item 50): 22 Sept 2012 (s 2(1) item 2)	—
Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Act 2012	145, 2012	24 Oct 2012	Sch 1: 9 Nov 2012 (s 2(1) item 2)	—
Financial Framework Legislation Amendment Act (No. 1) 2013	8, 2013	14 Mar 2013	Sch 1 (items 3, 4): 15 Mar 2013 (s 2)	Sch 1 (item 4)
Maritime Powers (Consequential Amendments) Act 2013	16, 2013	27 Mar 2013	Sch 2: 27 Mar 2014 (s 2(1) item 2)	—
Environment Protection and Biodiversity Conservation Amendment Act 2013	60, 2013	21 June 2013	Sch 1: 22 June 2013 (s 2(1) item 2)	Sch 1 (items 19, 20, 22–25)
Aboriginal Land Rights and Other Legislation Amendment Act 2013	93, 2013	28 June 2013	Sch 1 (items 28–36): 29 June 2013 (s 2)	Sch 1 (items 35, 36)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (items 22–24) and Sch 4 (item 80): 24 June 2014 (s 2(1) items 2, 9)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (items 144–156) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Act 2014	75, 2014	30 June 2014	Sch 1: 1 July 2014 (s 2(1) item 2)	Sch 1 (item 20)
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 3 (items 81–136, 348, 349): 5 Mar 2016 (s 2(1) item 2)	Sch 3 (items 348, 349)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Environment Legislation Amendment Act 2015	11, 2015	5 Mar 2015	Sch 2 (items 1–42): 6 Mar 2015 (s 2)	—
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (item 63) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 9
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 1 (items 102–105 Sch 2 (items 356–396): 18 June 2015 (s 2(1) items 2, 6) Sch 1 (items 184–203): 27 May 2015 (s 2(1) item 3) Sch 2 (items 131–137): 1 July 2016 (s 2(1) item 5)	Sch 1 (items 184–203) and Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015	62, 2015	16 June 2015	Sch 3: 16 June 2015 (s 2(1) item 3) Sch 2 (items 11–21) and Sch 4: 16 June 2016 (s 2(1) items 2, 4)	Sch 3 and Sch 4

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 2 (item 9): 20 Sept 2017 (s 2(1) item 4)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 180–199): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 147–159, 373–383): 10 Mar 2016 (s 2(1) item 6)	—
Law and Justice Legislation Amendment (Northern Territory Local Court) Act 2016	26, 2016	23 Mar 2016	Sch 1 (items 16, 34, 35): 1 May 2016 (s 2(1) item 2)	Sch 1 (items 34, 35)
Omnibus Repeal Day (Autumn 2015) Act 2016	47, 2016	5 May 2016	Sch 2 (items 5–13): 6 May 2016 (s 2(1) item 2)	—
Great Barrier Reef Marine Park Amendment (Authority Governance and Other Matters) Act 2018	12, 2018	5 Mar 2018	Sch 1 (items 39–49): 29 Oct 2018 (s 2(1) item 2)	Sch 1 (items 45–49)
Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019	57, 2019	7 Aug 2019	Sch 1 (items 61–67): 30 Aug 2019 (s 2(1) item 2)	—
Export Control (Consequential Amendments and Transitional Provisions) Act 2020	13, 2020	6 Mar 2020	Sch 2 (items 10, 11) and Sch 3 (items 1–91): 3 am (A.C.T.) 28 Mar 2021 (s 2(1) item 2)	Sch 2 (item 11) and Sch 3 (items 1–91)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aboriginal Land Rights (Northern Territory) Amendment (Jabiru) Act 2020	87, 2020	17 Sept 2020	Sch 1 (item 13): 18 Sept 2020 (s 2(1) item 1)	—
National Emergency Declaration (Consequential Amendments) Act 2020	129, 2020	15 Dec 2020	Sch 1 (items 21, 22): 16 Dec 2020 (s 2(1) item 2)	—
Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2021	73, 2021	30 June 2021	Sch 5 (item 30): 30 Dec 2021 (s 2(1) item 5)	—
Offshore Electricity Infrastructure (Consequential Amendments) Act 2021	121, 2021	2 Dec 2021	Sch 1 (item 23): 2 June 2022 (s 2(1) item 2)	—
Defence Legislation Amendment (Naval Nuclear Propulsion) Act 2023	48, 2023	3 July 2023	Sch 1 (items 3–9): 4 July 2023 (s 2(1) item 1)	—
Aboriginal Land Grant (Jervis Bay Territory) Amendment (Strengthening Land and Governance Provisions) Act 2023	57, 2023	21 Aug 2023	Sch 1 (items 40, 41): 22 Aug 2023 (s 2(1) item 1)	—
Nature Repair (Consequential Amendments) Act 2023	122, 2023	14 Dec 2023	Sch 2 (items 1–30): 15 Dec 2023 (s 2(1) item 3)	Sch 2 (items 24–30)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Act 2024	39, 2024	31 May 2024	Sch 3 (items 9–14): 14 Oct 2024 (s 2(1) item 2)	—
Environment Protection and Biodiversity Conservation Amendment (Reconsiderations) Act 2025	18, 2025	27 Mar 2025	28 Mar 2025 (s 2(1) item 1)	Sch 1 (item 3)

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1	
s 3	am No 88, 2003
s 5	am No 57, 2019
s 6	ad No 165, 2006
s 7	am No 165, 2006
s 9	am No 86, 2003
Chapter 2	
Part 2	
s 11	am No 125, 2008
Part 3	
Division 1	
Subdivision A	
s 12	am No 88, 2003
s 15A	am No 165, 2006; No 4, 2016
Subdivision AA	
Subdivision AA	ad No 88, 2003
s 15B	ad No 88, 2003
	am No 165, 2006
s 15C	ad No 88, 2003
	am No 165, 2006; No 4, 2016
Subdivision B	
s 17B	am No 165, 2006; No 4, 2016
Subdivision C	
s 18A	am No 165, 2006; No 4, 2016
s 19	am No 165, 2006
Subdivision D	
s 20A	am No 165, 2006; No 4, 2016

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Provision affected	How affected
s 20B	ad No 165, 2006
Subdivision E	
s 22A	am No 165, 2006; No 4, 2016
Subdivision F	
s 24	am No 165, 2006
s 24A	am No 165, 2006; No 4, 2016
Subdivision FA	
Subdivision FA	ad No 125, 2008
s 24B	ad No 125, 2008
s 24C	ad No 125, 2008
Subdivision FB	
Subdivision FB heading	am No 122, 2023
Subdivision FB	ad No 60, 2013
s 24D	ad No 60, 2013
	am No 122, 2023
s 24E	ad No 60, 2013
	am No 122, 2023
Subdivision H	
Subdivision H	ad No 82, 2001
s 25A	ad No 82, 2001
	am No 46, 2011; No 126, 2015
Subdivision HA	
Subdivision HA	ad No 165, 2006
s 25AA	ad No 165, 2006
	am No 125, 2008; No 60, 2013
Subdivision I	
Subdivision I	ad No 82, 2001
s 25B	ad No 82, 2001
	am No 165, 2006
s 25C	ad No 82, 2001
s 25D	ad No 82, 2001

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Endnote 4—Amendment history

Provision affected	How affected
	am No 165, 2006
s 25E	ad No 82, 2001
s 25F	ad No 82, 2001
Division 2	
Subdivision A	
s 26	am No 88, 2003
s 27A	am No 88, 2003; No 165, 2006; No 4, 2016
Subdivision AA	
Subdivision AA	ad No 88, 2003
s 27B	ad No 88, 2003
s 27C	ad No 88, 2003
	am No 165, 2006; No 4, 2016
Subdivision B	
s 28	am No 88, 2003; No 165, 2006; No 129, 2020
Subdivision C	
Subdivision C	ad No 88, 2003
s 28AA	ad No 88, 2003
	am No 46, 2011; No 126, 2015
Subdivision D	
Subdivision D	ad No 165, 2006
s 28AB	ad No 165, 2006
Division 3	rep No 165, 2006
s 28A	rep No 165, 2006
Part 4	
Division 1	
s 29	am No 165, 2006; No 125, 2008; No 60, 2013
s 30	am No 125, 2008
s 31	am No 165, 2006
Division 2	
Division 2 heading	rs No 165, 2006

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Provision affected	How affected
Subdivision A	
s 32	am No 165, 2006
Subdivision B	
s 33	am No 165, 2006
s 34	am No 88, 2003; No 125, 2008; No 60, 2013
Subdivision C	
s 34B	am No 165, 2006
s 34BA	ad No 88, 2003
	am No 165, 2006
s 34C	am No 165, 2006
s 34D	am No 165, 2006
s 34E	am No 165, 2006
s 34F	ad No 88, 2003
	am No 165, 2006
Subdivision D	
s 35	am No 165, 2006
s 36	am No 165, 2006
s 36A	ad No 165, 2006
Division 3	
Division 3	ad No 165, 2006
Subdivision A	
s 37	ad No 165, 2006
Subdivision B	
s 37A	ad No 165, 2006
Subdivision C	
s 37B	ad No 165, 2006
s 37C	ad No 165, 2006
s 37D	ad No 165, 2006
s 37E	ad No 165, 2006
s 37F	ad No 165, 2006
s 37G	ad No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s 37H	ad No 165, 2006
s 37J	ad No 165, 2006
	am No 48, 2023
Subdivision D	
s 37K	ad No 165, 2006
s 37L	ad No 165, 2006
Division 3A	
Division 3A	ad No 165, 2006
s 37M	ad No 165, 2006
Division 4	
Subdivision A	
s 38	rs No 30, 2002
Subdivision B	
s 40	am No 30, 2002; No 10, 2015
Subdivision C	
s 42	am No 30, 2002
Division 5	
s 43	am No 125, 2008
Division 6	
Division 6	ad No 82, 2001
s 43A	ad No 82, 2001
	am No 165, 2006
s 43B	ad No 82, 2001
	am No 165, 2006
Chapter 3	
Part 5	
Division 2	
Subdivision A	
s 46	am No 165, 2006; No 60, 2013
s 49	am No 125, 2008

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Provision affected	How affected
Subdivision B	
s 51	am No 165, 2006
s 51A	ad No 88, 2003
	am No 165, 2006
s 52	am No 165, 2006
s 53	am No 165, 2006
s 54	am No 165, 2006
s 55	am No 165, 2006
Subdivision C	
Subdivision C	ad No 165, 2006
s 56A	ad No 165, 2006
Division 3	
Subdivision A	
s 63	am No 63, 2002
s 64	am No 165, 2006
Subdivision B	
s 65	am No 165, 2006
s 65A	am No 165, 2006
Chapter 4	
Part 6	
s 66	am No 165, 2006
Part 7	
Division 1	
s 67	am No 165, 2006
s 67A	ad No 165, 2006
s 68	am No 165, 2006
s 68A	ad No 165, 2006
s 70	am No 82, 2001; No 165, 2006
s 71	am No 165, 2006
s 72	am No 165, 2006
s 73A	ad No 125, 2008

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Endnote 4—Amendment history

Provision affected	How affected
s 74	am No 88, 2003; No 32, 2005; No 165, 2006; No 125, 2008; No 8, 2010
s 74A	ad No 88, 2003
s 74AA	ad No 165, 2006
Division 1A	
Division 1A	ad No 165, 2006
s 74B	ad No 165, 2006
s 74C	ad No 165, 2006
s 74D	ad No 165, 2006
	am No 8, 2010
Division 2	
s 75	am No 88, 2003; No 165, 2006; No 125, 2008; No 60, 2013
s 76	am No 165, 2006
s 77	am No 88, 2003
s 77A	ad No 88, 2003
	am No 165, 2006
Division 3	
Division 3 heading	ad No 165, 2006
s 78	am No 88, 2003; No 165, 2006; No 18, 2025
s 78A	ad No 165, 2006
s 78B	ad No 165, 2006
	am No 8, 2010
s 78C	ad No 165, 2006
	am No 18, 2025
s 79	am No 165, 2006
Part 8	
Division 1	
s 80	am No 165, 2006
Division 2	
s 82	am No 165, 2006; No 125, 2008; No 60, 2013
s 83	am No 125, 2008

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Provision affected	How affected
s 84	am No 88, 2003
Division 3	
Subdivision A	
s 85	am No 165, 2006
Subdivision B	
s 86	rep No 165, 2006
s 87	am No 165, 2006
s 88	am No 165, 2006
s 89	am No 165, 2006
s 91	am No 165, 2006; No 75, 2014
Division 3A	
Division 3A	ad No 165, 2006
s 92	rs No 165, 2006
s 93	rs No 165, 2006
	am No 8, 2010; No 51, 2010
Division 4	
Division 4	rs No 165, 2006
s 94	rs No 165, 2006
s 95	rs No 165, 2006
s 95A	ad No 165, 2006
s 95B	ad No 165, 2006
	am No 75, 2014
s 95C	ad No 165, 2006
Division 5	
s 96A	ad No 165, 2006
s 96B	ad No 165, 2006
s 97	am No 165, 2006; No 125, 2008
s 98	am No 165, 2006
s 99	rs No 165, 2006
	am No 75, 2014
s 100	rs No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
Division 6	
s 101A	ad No 165, 2006
s 101B	ad No 165, 2006
s 102	am No 165, 2006; No 125, 2008
s 103	am No 165, 2006
s 104	rs No 165, 2006
	am No 75, 2014
s 105	rs No 165, 2006
Division 7	
Subdivision B	
s 107	am No 125, 2008
Subdivision C	
s 111	am No 4, 2016
s 112	am No 4, 2016
s 114	am No 4, 2016
s 117	am No 31, 2014
s 119	am No 4, 2016
s 120	am No 4, 2016
Subdivision E	
s 124	am No 92, 1999
s 125	am No 92, 1999
Part 9	
Division 1	
Subdivision A	
s 130	am No 165, 2006; No 145, 2012; No 122, 2023
s 131	am No 165, 2006
s 131AA	ad No 165, 2006
	am No 51, 2010; No 31, 2014
s 131AB	ad No 145, 2012
	am No 122, 2023
s 131A	ad No 165, 2006

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Provision affected	How affected
	am No 8, 2010
s 132	am No 165, 2006
s 132A	ad No 165, 2006
s 132B	ad No 75, 2014
s 133	am No 165, 2006; No 51, 2010
s 134	am No 165, 2006; No 75, 2014
s 134A	ad No 75, 2014
s 135A	ad No 165, 2006
	am No 51, 2010
Subdivision B	
s 136	am No 165, 2006; No 145, 2012; No 122, 2023
s 137	rs No 88, 2003
s 137A	ad No 88, 2003
s 139	am No 165, 2006
s 140A	am No 48, 2023
Division 2	
s 142	am No 165, 2006
s 142A	am No 9, 2006; No 165, 2006; No 4, 2016
s 142B	ad No 165, 2006
	am No 4, 2016
Division 3	
s 143	am No 165, 2006; No 51, 2010; No 75, 2014
s 143A	ad No 75, 2014
s 144	am No 165, 2006
s 145	am No 165, 2006
s 145A	am No 165, 2006
Division 4	
s 145B	am No 165, 2006
Division 5	
Division 5	ad No 165, 2006
s 145C	ad No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s 145D	ad No 165, 2006
s 145E	ad No 165, 2006
Part 10	
Division 1	
Subdivision A	
Subdivision A heading	ad No 165, 2006
s 146	am No 82, 2001; No 165, 2006
Subdivision B	
Subdivision B	ad No 165, 2006
s 146A	ad No 165, 2006
s 146B	ad No 165, 2006
	am No 51, 2010
s 146C	ad No 165, 2006
s 146D	ad No 165, 2006
Subdivision C	
Subdivision C	ad No 165, 2006
s 146E	ad No 165, 2006
s 146F	ad No 165, 2006
s 146G	ad No 165, 2006
s 146H	ad No 165, 2006
s 146F	ad No 165, 2006
s 146G	ad No 165, 2006
s 146H	ad No 165, 2006
s 146J	ad No 165, 2006
s 146K	ad No 165, 2006
s 146L	ad No 165, 2006
s 146M	ad No 165, 2006
	am No 48, 2023
Division 2	
s 148	am No 82, 2001
s 149	am No 82, 2001

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Provision affected	How affected
s 150	am No 82, 2001
s 151	am No 82, 2001; No 63, 2002
s 152	am No 165, 2006
s 153	rs No 165, 2006
Part 11	
Division 1A	
Division 1A	ad No 165, 2006
s 156A	ad No 165, 2006
s 156B	ad No 165, 2006
s 156C	ad No 165, 2006
s 156D	ad No 165, 2006
s 156E	ad No 165, 2006
Division 1B	
Division 1B	ad No 165, 2006
s 156F	ad No 165, 2006
	am No 75, 2014
Division 3	
s 158	am No 129, 2020
Division 3A	
Division 3A	ad No 165, 2006
s 158A	ad No 165, 2006
	am No 125, 2008
Division 4	
Subdivision A	
s 159	am No 165, 2006
s 160	am No 165, 2006
s 161	am No 165, 2006
s 161A	ad No 165, 2006
s 161B	ad No 165, 2006
	am No 73, 2021
s 163	am No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision B	rep No 165, 2006
s 165	rep No 165, 2006
Subdivision C	
s 168	am No 165, 2006
s 169	am No 165, 2006
s 170	am No 165, 2006
Division 5	
s 170A	am No 165, 2006; No 8, 2010
s 170B	ad No 165, 2006
s 170BA	ad No 165, 2006
Division 6	
Division 6	ad No 165, 2006
s 170C	ad No 165, 2006
Division 7	
Division 7	ad No 75, 2014
s 170CA	ad No 75, 2014
Chapter 5	
Chapter 5 heading	rs No 88, 2003
Part 11A	
Part 11A	ad No 165, 2006
s 170D	ad No 165, 2006
	am No 46, 2011
Part 12	
Division 1	
s 172	rs No 165, 2006
s 173	rs No 165, 2006
s 175	rep No 165, 2006
Division 2	
s 176	am No 88, 2003; No 165, 2006

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Provision affected	How affected
Part 13	
Division 1	
Subdivision A	
s 178	am No 10, 2015
s 179	am No 165, 2006
s 181	am No 10, 2015
s 183	am No 10, 2015
s 184	am No 165, 2006; No 126, 2015
s 185	rep No 165, 2006
s 186	am No 165, 2006
s 187	rs No 165, 2006
s 189	am No 165, 2006
s 189A	ad No 165, 2006
s 189B	ad No 165, 2006
s 191	rep No 165, 2006
s 193	am No 10, 2015
s 194	rs No 165, 2006
	am No 8, 2010; No 10, 2015
Subdivision AA	
Subdivision AA	ad No 165, 2006
s 194A	ad No 165, 2006
s 194B	ad No 165, 2006
s 194C	ad No 165, 2006
	am No 126, 2015
s 194D	ad No 165, 2006
	am No 126, 2015
s 194E	ad No 165, 2006
s 194F	ad No 165, 2006
s 194G	ad No 165, 2006
s 194H	ad No 165, 2006
s 194J	ad No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s 194K	ad No 165, 2006
s 194L	ad No 165, 2006
	am No 8, 2010
s 194M	ad No 165, 2006
s 194N	ad No 165, 2006
	am No 73, 2008
s 194P	ad No 165, 2006
s 194Q	ad No 165, 2006
	am No 73, 2008; No 8, 2010
s 194R	ad No 165, 2006
s 194S	ad No 165, 2006
s 194T	ad No 165, 2006
Subdivision B	
s 196	am No 165, 2006; No 11, 2015; No 4, 2016
s 196A	am No 11, 2015; No 4, 2016
s 196B	am No 165, 2006; No 11, 2015; No 4, 2016
s 196C	am No 11, 2015; No 4, 2016
s 196D	am No 165, 2006; No 11, 2015; No 4, 2016
s 196E	am No 11, 2015; No 4, 2016
s 196F	ad No 11, 2015
s 198	am No 11, 2015
s 197	am No 82, 2001; No 165, 2006
s 199	am No 165, 2006; No 4, 2016
s 200	am No 165, 2006; No 8, 2010
s 201	am No 165, 2006
s 203	am No 4, 2016
s 206A	am No 165, 2006; No 39, 2024
Subdivision BA	
s 207A	am No 165, 2006
s 207B	am No 4, 2016

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Provision affected	How affected
Subdivision C	
s 208A	ad No 82, 2001
	rs No 165, 2006
Division 2	
Subdivision A	
s 209	am No 165, 2006; No 126, 2015
Subdivision B	
s 211	am No 165, 2006; No 11, 2015; No 4, 2016
s 211A	am No 11, 2015; No 4, 2016
s 211B	am No 165, 2006; No 11, 2015; No 4, 2016
s 211C	am No 11, 2015; No 4, 2016
s 211D	am No 165, 2006; No 11, 2015; No 4, 2016
s 211E	am No 11, 2015; No 4, 2016
s 211F	ad No 11, 2015
s 212	am No 82, 2001; No 165, 2006; No 107, 2010
s 213	am No 11, 2015
s 214	am No 165, 2006; No 107, 2010; No 4, 2016
s 215	am No 165, 2006; No 8, 2010
s 216	am No 165, 2006
s 218	am No 4, 2016
s 221A	am No 165, 2006; No 39, 2024
Subdivision C	
s 222A	ad No 82, 2001
	rs No 165, 2006
Division 3	
Subdivision A	
s 224	am No 82, 2001; No 165, 2006; No 57, 2019
Subdivision B	
Subdivision B heading	rs No 165, 2006
s 225	am No 165, 2006
s 228A	ad No 165, 2006

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Provision affected	How affected
Subdivision C	
s 229	am No 165, 2006; No 4, 2016
s 229A	am No 4, 2016
s 229B	am No 165, 2006; No 4, 2016
s 229C	am No 4, 2016
s 229D	am No 165, 2006; No 4, 2016
s 230	am No 165, 2006; No 4, 2016
s 231	am No 82, 2001; No 165, 2006; No 125, 2008
s 232	am No 165, 2006; No 4, 2016
Subdivision D heading	rs No 82, 2001
	rep No 165, 2006
Subdivision D	rep No 165, 2006
s 232A	ad No 82, 2001
	rep No 165, 2006
s 232B	ad No 82, 2001
	rep No 165, 2006
s 233	am No 82, 2001
	rep No 165, 2006
s 234	am No 82, 2001
	rep No 165, 2006
s 235	am No 82, 2001
	rep No 165, 2006
Subdivision E	
s 236	am No 165, 2006; No 4, 2016
Subdivision F	
s 237	am No 165, 2006; No 8, 2010
s 238	am No 82, 2001; No 165, 2006
s 240	am No 4, 2016
s 243A	am No 165, 2006; No 39, 2024
Subdivision G	
s 245	am No 82, 2001

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Provision affected	How affected
	rs No 165, 2006
Division 4	
Subdivision A	
s 248	am No 10, 2015
s 249	am No 10, 2015
s 251	am No 10, 2015
Subdivision B	
s 254	am No 165, 2006; No 11, 2015; No 4, 2016
s 254A	am No 11, 2015; No 4, 2016
s 254B	am No 165, 2006; No 11, 2015; No 4, 2016
s 254C	am No 11, 2015; No 4, 2016
s 254D	am No 165, 2006; No 11, 2015; No 4, 2016
s 254E	am No 11, 2015; No 4, 2016
s 254F	ad No 11, 2015
s 255	am No 82, 2001; No 165, 2006; No 125, 2008
s 256	am No 165, 2006; No 4, 2016
s 257	am No 165, 2006; No 8, 2010
s 258	am No 165, 2006; No 8, 2010
s 260	am No 4, 2016
s 263A	am No 165, 2006; No 39, 2024
Subdivision C	
s 265	am No 82, 2001
	rs No 165, 2006
Division 4A	rep No 165, 2006
s 266A	rep No 165, 2006
Division 5	
Division 5 heading	rs No 165, 2006
Subdivision AA	
Subdivision AA	ad No 165, 2006
s 266B	ad No 165, 2006
	am No 8, 2010

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Provision affected	How affected
Subdivision A	
s 267	am No 165, 2006
s 269AA	ad No 165, 2006
	am No 73, 2008
s 269A	am No 165, 2006
s 270	am No 165, 2006
s 271	am No 165, 2006
s 273	am No 165, 2006
s 278	am No 165, 2006
s 282	am No 31, 2014
s 283A	am No 165, 2006
Subdivision C	
s 299	am No 165, 2006
s 300B	ad No 165, 2006
Division 8	
s 303AA	ad No 165, 2006
s 303AB	ad No 165, 2006
Part 13A	
Part 13A	ad No 82, 2001
Division 1	
s 303BA	ad No 82, 2001
s 303BAA	ad No 82, 2001
s 303BB	ad No 82, 2001
s 303BC	ad No 82, 2001
Division 2	
Subdivision A	
s 303CA	ad No 82, 2001
	am No 8, 2010; No 10, 2015
s 303CB	ad No 82, 2001
	am No 8, 2010; No 10, 2015

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Provision affected	How affected
Subdivision B	
s 303CC	ad No 82, 2001
	am No 4, 2016
s 303CD	ad No 82, 2001
	am No 4, 2016
s 303CE	ad No 82, 2001
s 303CF	ad No 82, 2001
s 303CG	ad No 82, 2001
	am No 165, 2006
s 303CH	ad No 82, 2001
	am No 165, 2006; No 10, 2015
s 303CI	ad No 82, 2001
s 303CJ	ad No 82, 2001
	am No 165, 2006
s 303CK	ad No 82, 2001
	am No 8, 2010
Subdivision C	
s 303CL	ad No 82, 2001
s 303CM	ad No 82, 2001
s 303CN	ad No 82, 2001
Division 3	
Subdivision A	
s 303DA	ad No 82, 2001
s 303DB	ad No 82, 2001
	am No 165, 2006; No 8, 2010; No 10, 2015
s 303DC	ad No 82, 2001
	am No 8, 2010; No 10, 2015
Subdivision B	
s 303DD	ad No 82, 2001
	am No 4, 2016
s 303DE	ad No 82, 2001

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Provision affected	How affected
s 303DF	ad No 82, 2001
s 303DG	ad No 82, 2001
	am No 165, 2006
s 303DH	ad No 82, 2001
s 303DI	ad No 82, 2001
	am No 165, 2006
s 303DJ	ad No 82, 2001
	am No 8, 2010
Division 4	
Subdivision A	
s 303EA	ad No 82, 2001
s 303EB	ad No 82, 2001
	am No 165, 2006; No 8, 2010; No 10, 2015; No 62, 2015
s 303EC	ad No 82, 2001
	am No 8, 2010; No 10, 2015
Subdivision B	
s 303ED	ad No 82, 2001
	am No 165, 2006
s 303EE	ad No 82, 2001
	am No 165, 2006
s 303EF	ad No 82, 2001
	rs No 165, 2006
s 303EG	ad No 82, 2001
s 303EH	ad No 82, 2001
s 303EI	ad No 82, 2001
s 303EJ	ad No 82, 2001
Subdivision C	
s 303EK	ad No 82, 2001
	am No 4, 2016
s 303EL	ad No 82, 2001
s 303EM	ad No 82, 2001

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Provision affected	How affected
s 303EN	ad No 82, 2001
	am No 165, 2006
s 303EO	ad No 82, 2001
s 303EP	ad No 82, 2001
	am No 165, 2006
s 303EQ	ad No 82, 2001
	am No 8, 2010
Subdivision D	
s 303ER	ad No 82, 2001
s 303ES	ad No 82, 2001
s 303ET	ad No 82, 2001
s 303EU	ad No 82, 2001
	am No 10, 2015
s 303EV	ad No 82, 2001
	am No 4, 2016
s 303EW	ad No 82, 2001
Division 5	
Subdivision A	
s 303FA	ad No 82, 2001
s 303FB	ad No 82, 2001
s 303FC	ad No 82, 2001
s 303FD	ad No 82, 2001
s 303FE	ad No 82, 2001
s 303FF	ad No 82, 2001
s 303FG	ad No 82, 2001
	am No 10, 2015
s 303FH	ad No 82, 2001
s 303FI	ad No 82, 2001
Subdivision B	
s 303FJ	ad No 82, 2001
	am No 165, 2006

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Provision affected	How affected
s 303FK	ad No 82, 2001
s 303FL	ad No 82, 2001
s 303FLA	ad No 165, 2006
s 303FM	ad No 82, 2001
s 303FN	ad No 82, 2001
s 303FO	ad No 82, 2001
s 303FP	ad No 82, 2001
	am No 8, 2010
s 303FQ	ad No 82, 2001
s 303FR	ad No 82, 2001
	am No 8, 2010
s 303FRA	ad No 82, 2001
	am No 46, 2011
s 303FS	ad No 82, 2001
	am No 8, 2010
s 303FT	ad No 82, 2001
	am No 8, 2010
s 303FU	ad No 82, 2001
Division 6	
s 303GA	ad No 82, 2001
s 303GB	ad No 82, 2001
	am No 165, 2006; No 8, 2010
s 303GC	ad No 82, 2001
	am No 165, 2006
s 303GD	ad No 82, 2001
	am No 165, 2006
s 303GE	ad No 82, 2001
	am No 165, 2006
s 303GF	ad No 82, 2001
	am No 4, 2016
s 303GG	ad No 82, 2001

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Provision affected	How affected
s 303GH	ad No 82, 2001
s 303GI	ad No 82, 2001
s 303GJ	ad No 82, 2001
	am No 38, 2005; No 165, 2006; No 39, 2024
s 303GK	ad No 82, 2001
s 303GL	ad No 82, 2001
s 303GM	ad No 82, 2001
s 303GN	ad No 82, 2001
	am No 4, 2016
s 303GO	ad No 82, 2001
s 303GP	ad No 82, 2001
	am No 4, 2016
s 303GQ	ad No 82, 2001
s 303GR	ad No 82, 2001
s 303GS	ad No 82, 2001
s 303GT	ad No 82, 2001
s 303GU	ad No 82, 2001
s 303GV	ad No 82, 2001
	am No 62, 2015
s 303GW	ad No 82, 2001
	am No 41, 2015; No 62, 2015
s 303GX	ad No 82, 2001
	am No 10, 2015
s 303GY	ad No 82, 2001
Part 14	
s 304	am No 88, 2003
	rs No 165, 2006
	am No 60, 2013; No 122, 2023
s 305	am No 88, 2003; No 165, 2006; No 60, 2013; No 48, 2023; No 122, 2023
s 306	am No 88, 2003; No 165, 2006; No 60, 2013; No 122, 2023

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Provision affected	How affected
s 306A	ad No 165, 2006
s 307A	ad No 165, 2006
s 309	am No 88, 2003
Part 15	
Division 1	
Subdivision D	
s 316	am No 47, 2016
s 318	rs No 88, 2003
Subdivision E	
s 321	am No 125, 2008
Subdivision F	
s 323	am No 88, 2003
Division 1A	
Division 1A	ad No 88, 2003
Subdivision A	
s 324A	ad No 88, 2003
s 324B	ad No 88, 2003
	rep No 165, 2006
Subdivision B	
s 324C	ad No 88, 2003
	am No 165, 2006
s 324D	ad No 88, 2003
Subdivision BA	
Subdivision BA	ad No 165, 2006
s 324E	ad No 88, 2003
	rs No 165, 2006
s 324F	ad No 88, 2003
	rs No 165, 2006
s 324G	ad No 88, 2003
	rs No 165, 2006
	am No 88, 2003; No 126, 2015

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Provision affected	How affected
s 324H	ad No 88, 2003
	rs No 165, 2006
	am No 126, 2015
s 324J	ad No 88, 2003
	rs No 165, 2006
	am No 88, 2003
s 324JA	ad No 165, 2006
s 324JB	ad No 165, 2006
s 324JC	ad No 165, 2006
s 324JD	ad No 165, 2006
s 324JE	ad No 165, 2006
s 324JF	ad No 165, 2006
	am No 8, 2010
s 324JG	ad No 165, 2006
s 324JH	ad No 165, 2006
s 324JI	ad No 165, 2006
s 324JJ	ad No 165, 2006
	am No 8, 2010
Subdivision BB	
Subdivision BB	ad No 165, 2006
s 324JK	ad No 165, 2006
s 324JL	ad No 165, 2006
	am No 8, 2010
s 324JM	ad No 165, 2006
s 324JN	ad No 165, 2006
s 324JO	ad No 165, 2006
s 324JP	ad No 165, 2006
s 324JQ	ad No 165, 2006
	am No 8, 2010
Subdivision BC	
Subdivision BC	ad No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s 324JR	ad No 165, 2006
s 324JS	ad No 165, 2006
s 324K	ad No 88, 2003
	am No 165, 2006
s 324L	ad No 88, 2003
	am No 165, 2006; No 8, 2010; No 10, 2015
s 324M	ad No 88, 2003
	am No 165, 2006; No 8, 2010; No 10, 2015
s 324N	ad No 88, 2003
	rs No 165, 2006
	am No 46, 2011
s 324P	ad No 88, 2003
	am No 8, 2010
s 324Q	ad No 88, 2003
s 324R	ad No 88, 2003
	am No 165, 2006; No 10, 2015
Subdivision C	
s 324S	ad No 88, 2003
	am No 165, 2006
s 324T	ad No 88, 2003
	am No 47, 2016
s 324U	ad No 88, 2003
s 324V	ad No 88, 2003
s 324W	ad No 88, 2003
	am No 8, 2010
Subdivision D	
s 324X	ad No 88, 2003
	am No 125, 2008
Subdivision E	
s 324Y	ad No 88, 2003
	am No 165, 2006

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Provision affected	How affected
Subdivision F	
s 324Z	ad No 88, 2003
s 324ZA	ad No 88, 2003
Subdivision G	
s 324ZB	ad No 88, 2003
Subdivision H	
s 324ZC	ad No 88, 2003
Division 2	
Subdivision D	
s 328	am No 47, 2016
s 330	rs No 88, 2003
Division 3A	
Division 3A	ad No 88, 2003
Subdivision A	
s 341A	ad No 88, 2003
s 341B	ad No 88, 2003
Subdivision B	
s 341C	ad No 88, 2003
	am No 165, 2006
s 341D	ad No 88, 2003
Subdivision BA	
Subdivision BA	ad No 165, 2006
s 341E	ad No 88, 2003
	rs No 165, 2006
s 341F	ad No 88, 2003
	rs No 165, 2006
s 341G	ad No 88, 2003
	rs No 165, 2006
	am No 88, 2003; No 126, 2015
s 341H	ad No 88, 2003
	rs No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s 341J	ad No 88, 2003
	rs No 165, 2006
	am No 88, 2003
s 341JA	ad No 165, 2006
s 341JB	ad No 165, 2006
s 341JC	ad No 165, 2006
s 341JD	ad No 165, 2006
s 341JE	ad No 165, 2006
	am No 8, 2010
s 341JF	ad No 165, 2006
s 341JG	ad No 165, 2006
s 341JH	ad No 165, 2006
s 341JI	ad No 165, 2006
	am No 8, 2010
Subdivision BB	
Subdivision BB	ad No 165, 2006
s 341JJ	ad No 165, 2006
s 341JK	ad No 165, 2006
	am No 8, 2010
s 341JL	ad No 165, 2006
s 341JM	ad No 165, 2006
s 341JN	ad No 165, 2006
s 341JO	ad No 165, 2006
s 341JP	ad No 165, 2006
	am No 8, 2010
Subdivision BC	
Subdivision BC	ad No 165, 2006
s 341JQ	ad No 165, 2006
s 341JR	ad No 165, 2006
s 341K	ad No 88, 2003
	am No 165, 2006

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Provision affected	How affected
s 341L	ad No 88, 2003
	am No 165, 2006; No 8, 2010; No 10, 2015
s 341M	ad No 88, 2003
	am No 8, 2010; No 10, 2015
s 341N	ad No 88, 2003
	rs No 165, 2006
	am No 46, 2011
s 341P	ad No 88, 2003
	am No 8, 2010
s 341Q	ad No 88, 2003
s 341R	ad No 88, 2003
	am No 165, 2006; No 10, 2015
Subdivision C	
s 341S	ad No 88, 2003
	am No 165, 2006
s 341T	ad No 88, 2003
	am No 165, 2006; No 8, 2010
s 341U	ad No 88, 2003
	am No 47, 2016
s 341V	ad No 88, 2003
s 341W	ad No 88, 2003
s 341X	ad No 88, 2003
	am No 8, 2010
Subdivision D	
s 341Y	ad No 88, 2003
Subdivision E	
s 341Z	ad No 88, 2003
s 341ZA	ad No 88, 2003
s 341ZB	ad No 88, 2003
s 341ZC	ad No 88, 2003
s 341ZD	ad No 88, 2003

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Provision affected	How affected
	rep No 165, 2006
s 341ZE	ad No 88, 2003
Subdivision F	rep No 165, 2006
s 341ZF	ad No 88, 2003
	rep No 165, 2006
Subdivision G	
s 341ZG	ad No 88, 2003
Subdivision H	
s 341ZH	ad No 88, 2003
Division 4	
Subdivision B	
s 345A	am No 93, 2013
s 346	am No 165, 2006
s 347	am No 165, 2006
s 349	rep No 165, 2006
s 350	am No 46, 2011
Subdivision C	
s 354	am No 165, 2006
s 354A	ad No 165, 2006
s 355	am No 165, 2006
s 355A	ad No 165, 2006
s 356	am No 165, 2006
s 359B	ad No 165, 2006
s 360	rep No 165, 2006
Subdivision D	
s 363	am No 57, 2023
Subdivision E	
s 367	am No 88, 2003; No 165, 2006
s 371	am No 10, 2015
s 373	am No 165, 2006

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Provision affected	How affected
Subdivision F	
s 379	am No 165, 2006
s 379A	ad No 165, 2006
s 380	am No 46, 2011
s 382	am No 165, 2006
Subdivision G	
s 387	am No 165, 2006
s 388	am No 93, 2013, No 87, 2020
s 389	am No 93, 2013
Chapter 5A	
Chapter 5A	ad No 165, 2006
Part 15A	
s 390K	ad No 165, 2006
s 390L	ad No 165, 2006
s 390M	ad No 165, 2006
s 390N	ad No 165, 2006
s 390P	ad No 165, 2006
s 390Q	ad No 165, 2006
	am No 8, 2010
s 390R	ad No 165, 2006
Chapter 5B	
Chapter 5B	ad No 131, 2012
Part 15B	
Division 1	
s 390SA	ad No 131, 2012
s 390SB	ad No 131, 2012
Division 2	
Subdivision A	
s 390SC	ad No 131, 2012
Subdivision B	
s 390SD	ad No 131, 2012

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Provision affected	How affected
	am No 126, 2015
s 390SE	ad No 131, 2012
Subdivision C	
s 390SF	ad No 131, 2012
	am No 126, 2015
Subdivision D	
s 390SG	ad No 131, 2012
	am No 126, 2015
Division 3	
s 390SH	ad No 131, 2012
s 390SI	ad No 131, 2012
s 390SJ	ad No 131, 2012
s 390SK	ad No 131, 2012
s 390SL	ad No 131, 2012
Division 4	
s 390SM	ad No 131, 2012
Chapter 6	
Part 16	
Part 16 heading	rs No 88, 2003
s 391	am No 82, 2001; No 88, 2003; No 9, 2006; No 165, 2006; No 31, 2014
s 391A	ad No 88, 2003
	rep No 165, 2006
Part 17	
Division 1	
Subdivision A	
s 393	am No 146, 1999; No 139, 2010; No 59, 2015
s 394	rs No 165, 2006
	ed C52
s 395	am No 165, 2006; No 4, 2016

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Provision affected	How affected
Subdivision B	
s 397	am No 82, 2001; No 165, 2006; No 125, 2008; No 62, 2015
	ed C52
s 398	am No 139, 2010; No 59, 2015
s 399	am No 82, 2001; No 125, 2008; No 4, 2016
Subdivision BA	
Subdivision BA	ad No 165, 2006
s 399A	ad No 165, 2006
	am No 8, 2010
Subdivision BB	
Subdivision BB	ad No 125, 2008
s 399B	ad No 125, 2008
Subdivision C	
s 401	am No 4, 2016
s 402	am No 4, 2016
Division 2	
Division 2 heading	rs No 165, 2006
s 403	am No 165, 2006; No 125, 2008
s 404	am No 82, 2001; No 165, 2006; No 73, 2008
s 405	am No 165, 2006
s 406	am No 165, 2006; No 125, 2008
s 406A	ad No 165, 2006
	am No 125, 2008
s 406AA	ad No 125, 2008
s 406B	ad No 165, 2006
	am No 125, 2008
Division 3	
s 407	am No 165, 2006
s 407A	ad No 165, 2006
	am No 125, 2008
s 407B	ad No 165, 2006

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Provision affected	How affected
s 408	am No 82, 2001; No 165, 2006; No 125, 2008
s 409	am No 82, 2001; No 165, 2006; No 125, 2008
s 409A	ad No 165, 2006
s 409B	ad No 165, 2006
s 410	am No 165, 2006
s 411	am No 41, 2003
s 412	am No 165, 2006
s 412A	am No 165, 2006; No 4, 2016
Division 4	
s 413	am No 165, 2006; No 125, 2008
s 414	am No 165, 2006; No 125, 2008
s 416	am No 165, 2006; No 31, 2014
s 417	am No 165, 2006; No 125, 2008
s 418A	ad No 165, 2006
s 422	am No 165, 2006; No 125, 2008
s 425	am No 41, 2003
s 427	am No 9, 2006
Division 5	rep No 165, 2006
s 429	rep No 165, 2006
Division 6	
s 430	am No 82, 2001; No 165, 2006; No 73, 2008; No 125, 2008
s 431	am No 125, 2008
s 432	am No 165, 2006; No 125, 2008
s 433	am No 165, 2006; No 125, 2008
s 433A	ad No 165, 2006
Division 6A	
Division 6A	ad No 165, 2006
s 433B	ad No 165, 2006
Division 7	
s 436	am No 4, 2016
s 437	am No 165, 2006

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Provision affected	How affected
s 438	rs No 165, 2006
s 439	rep No 165, 2006
s 442	am No 82, 2001; No 165, 2006
Division 8A	
Division 8A	ad No 82, 2001
s 443A	ad No 82, 2001
	am No 165, 2006; No 4, 2016
Division 9	
s 444	am No 82, 2001; No 125, 2008; No 4, 2016
Division 10	
Subdivision AA	
Subdivision AA	ad No 82, 2001
s 444A	ad No 82, 2001
	am No 165, 2006
s 444B	ad No 82, 2001
s 444C	ad No 82, 2001
s 444D	ad No 82, 2001
s 444E	ad No 82, 2001
s 444F	ad No 82, 2001
	rep No 165, 2006
s 444G	ad No 82, 2001
	am No 165, 2006
s 444H	ad No 82, 2001
	am No 165, 2006
s 444J	ad No 82, 2001
	rep No 165, 2006
s 444K	ad No 82, 2001
	rep No 165, 2006
Subdivision AB	
Subdivision A heading	rs No 165, 2006
	rep No 125, 2008

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision AB heading	ad No 125, 2008
s 445	rs No 165, 2006
	am No 125, 2008
s 446	am No 165, 2006; No 125, 2008; No 59, 2015
Subdivision AC	
Subdivision AC	ad No 125, 2008
s 447	rep No 165, 2006
	ad No 125, 2008
s 448	rep No 165, 2006
Subdivision B	
Subdivision B heading	rs No 165, 2006
s 449	am No 165, 2006
s 449A	ad No 165, 2006
Subdivision BA	
Subdivision BA	ad No 165, 2006
s 449BA	ad No 165, 2006
	am No 125, 2008
s 449BB	ad No 165, 2006
	am No 46, 2011
Subdivision C	
Subdivision C heading	rs No 165, 2006
s 450	am No 82, 2001; No 165, 2006; No 125, 2008
s 450A	ad No 165, 2006
	am No 125, 2008
s 450B	ad No 165, 2006
Subdivision D heading	rep No 165, 2006
s 451	am No 82, 2001
Subdivision E heading	rep No 165, 2006
s 452	am No 165, 2006
Subdivision F	
Subdivision F heading	rs No 165, 2006

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Provision affected	How affected
s 453	am No 165, 2006
s 454	am No 165, 2006
Subdivision G	
Subdivision G heading	rs No 165, 2006
s 455	am No 165, 2006; No 4, 2016
s 456	am No 165, 2006; No 125, 2008
Subdivision H	
Subdivision H heading	ad No 165, 2006
s 456AA	ad No 165, 2006
s 456AB	ad No 165, 2006
s 456AC	ad No 165, 2006
Division 11	rep No 16, 2013
s 457	rep No 16, 2013
Division 12	
s 460	am No 4, 2016
s 461	am No 4, 2016
Division 13	
Subdivision C	
s 472	am No 165, 2006; No 39, 2024
s 473	am No 165, 2006; No 39, 2024
Division 14	
s 478	rep No 165, 2006
Division 14A	
Division 14A	ad No 165, 2006
s 480A	ad No 165, 2006
s 480B	ad No 165, 2006
s 480C	ad No 165, 2006
Division 14B	
Division 14B	ad No 165, 2006
Subdivision A	
s 480D	ad No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s 480E	ad No 165, 2006
s 480F	ad No 165, 2006
s 480G	ad No 165, 2006
s 480H	ad No 165, 2006
s 480J	ad No 165, 2006
Subdivision B	
s 480K	ad No 165, 2006
Subdivision C	
s 480L	ad No 165, 2006
s 480M	ad No 165, 2006
Subdivision D	
s 480N	ad No 165, 2006
Division 15	
Subdivision A	
s 486	rep No 165, 2006
Subdivision C	
Subdivision C	ad No 165, 2006
s 486DA	ad No 165, 2006
s 486DB	ad No 165, 2006
Division 15A	
Division 15A	ad No 165, 2006
s 486E	ad No 165, 2006
	am No 125, 2008; No 12, 2018
s 486F	ad No 165, 2006
s 486G	ad No 165, 2006
	am No 73, 2008
s 486H	ad No 165, 2006
	am No 125, 2008
s 486J	ad No 165, 2006
Division 17	
s 489	am No 82, 2001; No 4, 2016

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Provision affected	How affected
s 490	am No 4, 2016
s 491	am No 4, 2016
Division 18	
s 494	am No 131, 2012
s 495	am No 88, 2003; No 165, 2006; No 131, 2012; No 60, 2013; No 4, 2016
s 496	am No 75, 2014
Division 18A	
Division 18A	ad No 165, 2006
s 496A	ad No 165, 2006
s 496B	ad No 165, 2006
s 496C	ad No 165, 2006
	am No 60, 2013
s 496D	ad No 165, 2006
Division 19	
s 497	am No 165, 2006
Division 21	
s 498A	am No 165, 2006
Division 22	
Division 22	ad No 165, 2006
s 498B	ad No 165, 2006
Part 19	
Division 1	
s 503	am No 165, 2006
Division 2	rep No 47, 2016
s 504	rep No 47, 2016
s 505	rep No 47, 2016
Division 2B	
Division 2B heading	am No 122, 2023
Division 2B	ad No 145, 2012
s 505C	ad No 145, 2012

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Endnote 4—Amendment history

Provision affected	How affected
	am No 122, 2023
s 505D	ad No 145, 2012
	am No 122, 2023
s 505E	ad No 145, 2012
Division 3	
s 506	am No 145, 2012; No 47, 2016; No 122, 2023
Division 5	
Subdivision A	
s 514A	am No 62, 2014
s 514B	am No 165, 2006
s 514D	am No 8, 2013; No 47, 2016
Subdivision B	
s 514G	am No 46, 2011
Subdivision C	
s 514L	rep No 62, 2014
s 514M	am No 92, 1999
s 514P	am No 62, 2014
Subdivision D	
s 514S	am No 62, 2014
s 514T	am No 62, 2014
Subdivision E	
s 514U	am No 92, 1999
	rs No 62, 2014
s 514V	am No 62, 2014
Part 19A	
Part 19A	ad No 75, 2014
s 514Y	ad No 75, 2014
s 514YA	ad No 75, 2014
s 514YB	ad No 75, 2014
Part 20	
s 515	am No 88, 2003

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Provision affected	How affected
s 515AA	ad No 125, 2008
	am No 12, 2018
s 515AB	ad No 125, 2008
	am No 12, 2018
Part 20A	
Part 20A heading	am No 8, 2010
Part 20A	ad No 88, 2003
s 515A	ad No 88, 2003
	am No 8, 2010
Part 21	
Division 1	
s 516A	am No 92, 1999; No 82, 2001; No 62, 2014
Chapter 7	
Part 22	
s 517	am No 82, 2001; No 10, 2015
s 517A	ad No 165, 2006
s 520	am No 82, 2001; No 63, 2002; No 75, 2014
s 520A	ad No 165, 2006
s 521A	ad No 75, 2014
s 522B	rep No 82, 2001
Chapter 8	
Part 23	
Division 1	
Subdivision A	
s 523	am No 82, 2001; No 63, 2002
s 524	am No 17, 2006; No 117, 2008; No 103, 2010; No 62, 2015; No 13, 2020; No 121, 2021
s 524B	rep No 82, 2001
Subdivision B	
s 525	am No 165, 2006 (Sch 1 item 782); No 59, 2015

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision C	
s 526	am No 55, 2001
Subdivision E	
Subdivision E	ad No 82, 2001
s 527A	ad No 82, 2001
s 527B	ad No 82, 2001
s 527C	ad No 82, 2001
s 527D	ad No 82, 2001
Subdivision F	
Subdivision F	ad No 165, 2006
s 527E	ad No 165, 2006
Division 2	
s 528	am No 82, 2001; No 30, 2002; No 63, 2002; No 88, 2003; No 125, 2006; No 165, 2006; No 73, 2008; No 125, 2008; No 107, 2010; No 5, 2011; No 46, 2011; No 131, 2012; No 136, 2012; No 145, 2012; No 60, 2013; No 75, 2014; No 10, 2015; No 11, 2015; No 59, 2015; No 62, 2015; No 126, 2015; No 26, 2016; No 57, 2019 ed C53 am No 57, 2023; No 122, 2023
Schedule 1	
Schedule 1	ad No 165, 2006
Part 1	
Division 3	
c 4	am No 126, 2015
Part 2	
Division 1	
c 8	am No 125, 2008
Division 2	
c 10	am No 125, 2008
Part 3	
Division 1	
c 15	am No 125, 2008

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Provision affected	How affected
Division 3	
c 17	am No 125, 2008; No 12, 2018
Division 4	
c 19	am No 125, 2008
Part 5	
Division 1	
c 26	am No 63, 2007; No 125, 2008
Division 2	
Subdivision B	
c 38	am No 125, 2008; No 12, 2018
Subdivision C	
c 42	am No 51, 2010
Division 4	
Subdivision A	
c 49	am No 63, 2007
Subdivision B	
c 51	am No 63, 2007
c 52	am No 63, 2007
Subdivision C	
c 53	am No 63, 2007; No 51, 2010

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