



# **Environment Protection and Biodiversity Conservation Act 1999**

**No. 91, 1999**

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



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# Contents

<b>Chapter 1—Preliminary</b>	2
<b>Part 1—Preliminary</b>	2
1 Short title.....	2
2 Commencement.....	2
3 Objects of Act.....	2
3A Principles of ecologically sustainable development .....	4
4 Act to bind Crown .....	5
5 Application of Act.....	5
7 Application of the <i>Criminal Code</i> .....	7
8 Native title rights not affected .....	7
9 Relationship with other Acts .....	7
10 Relationship with State law .....	8
<b>Chapter 2—Protecting the environment</b>	9
<b>Part 2—Simplified outline of this Chapter</b>	9
11 Simplified outline of this Chapter.....	9
<b>Part 3—Requirements for environmental approvals</b>	10
<b>Division 1—Requirements relating to matters of national environmental significance</b>	10
<b>Subdivision A—World Heritage</b>	10
12 Requirement for approval of activities with a significant impact on a declared World Heritage property .....	10
13 What is a <i>declared World Heritage property</i> ?.....	11
14 Declaring a property to be a declared World Heritage property .....	11
15 Amending or revoking a declaration of a declared World Heritage property.....	14
15A Offences relating to declared World Heritage properties.....	14
<b>Subdivision B—Wetlands of international importance</b>	16
16 Requirement for approval of activities with a significant impact on a declared Ramsar wetland .....	16
17 What is a <i>declared Ramsar wetland</i> ? .....	17
17A Making and revoking declarations of wetlands .....	17
17B Offences relating to declared Ramsar wetlands.....	19
<b>Subdivision C—Listed threatened species and communities</b>	20

---

---

18	Actions with significant impact on listed threatened species or endangered community prohibited without approval .....	20
18A	Offences relating to threatened species etc. ....	22
19	Certain actions relating to listed threatened species and listed threatened ecological communities not prohibited .....	23
<b>Subdivision D—Listed migratory species</b>		24
20	Requirement for approval of activities with a significant impact on a listed migratory species.....	24
20A	Offences relating to listed migratory species.....	25
<b>Subdivision E—Protection of the environment from nuclear actions</b>		26
21	Requirement for approval of nuclear actions.....	26
22	What is a <i>nuclear action</i> ? .....	27
22A	Offences relating to nuclear actions.....	29
<b>Subdivision F—Marine environment</b>		31
23	Requirement for approval of activities involving the marine environment.....	31
24	What is a <i>Commonwealth marine area</i> ?.....	34
24A	Offences relating to marine areas .....	34
<b>Subdivision G—Additional matters of national environmental significance</b>		38
25	Requirement for approval of prescribed actions .....	38
<b>Division 2—Protection of the environment from proposals involving the Commonwealth</b>		41
<b>Subdivision A—Protection of environment from actions involving Commonwealth land</b>		41
26	Requirement for approval of activities involving Commonwealth land.....	41
27	What is <i>Commonwealth land</i> ? .....	42
27A	Offences relating to Commonwealth land .....	42
<b>Subdivision B—Protection of the environment from Commonwealth actions</b>		44
28	Requirement for approval of activities of Commonwealth agencies significantly affecting the environment.....	44
<b>Division 3—Review of extension of operation of this Part</b>		45
28A	Identifying extra matters to be protected by this Part .....	45

---

---

<b>Part 4—Cases in which environmental approvals are not needed</b>	47
<b>Division 1—Actions covered by bilateral agreements</b>	47
29    Actions declared by agreement not to need approval .....	47
30    Extended operation in State and Northern Territory waters.....	48
31    Extended operation in non-self-governing Territories.....	48
<b>Division 2—Actions covered by Ministerial declarations</b>	50
<b>Subdivision A—Effect of declarations</b>	50
32    Actions declared by Minister not to need approval .....	50
<b>Subdivision B—Making declarations</b>	50
33    Making declaration that actions do not need approval under Part 9 .....	50
34    What is <i>matter protected</i> by a provision of Part 3? .....	53
<b>Subdivision C—Prerequisites for making declarations</b>	56
34A   Minister may only make declaration if prescribed criteria are met.....	56
34B   Declarations relating to declared World Heritage properties.....	56
34C   Declarations relating to declared Ramsar wetlands .....	56
34D   Declarations relating to listed threatened species and ecological communities .....	57
34E   Declarations relating to migratory species.....	58
<b>Subdivision D—Other rules about declarations</b>	59
35    Revoking declarations .....	59
36    Other rules about declarations .....	60
<b>Division 4—Forestry operations in certain regions</b>	61
<b>Subdivision A—Regions covered by regional forest agreements</b>	61
38    Approval not needed for forestry operations permitted by regional forest agreements.....	61
<b>Subdivision B—Regions subject to a process of negotiating a                     regional forest agreement</b>	61
39    Object of this Subdivision .....	61
40    Forestry operations in regions not yet covered by regional forest agreements.....	62
41    What is an <i>RFA region</i> ?.....	63
<b>Subdivision C—Limits on application</b>	64
42    This Division does not apply to some forestry operations .....	64

---

---

<b>Division 5—Actions in the Great Barrier Reef Marine Park</b>	65
43    Actions taken in accordance with permission.....	65
<b>Chapter 3—Bilateral agreements</b>	66
<b>Part 5—Bilateral agreements</b>	66
<b>Division 1—Object of Part</b>	66
44    Object of this Part.....	66
<b>Division 2—Making bilateral agreements</b>	67
<b>Subdivision A—Power to make bilateral agreements</b>	67
45    Minister may make agreement.....	67
46    Agreement may declare actions do not need approval under Part 9 .....	68
47    Agreement may declare classes of actions do not need assessment .....	72
48    Other provisions of bilateral agreements .....	73
48A   Mandatory provisions .....	74
49    Express provision needed to affect Commonwealth areas or actions .....	76
<b>Subdivision B—Prerequisites for making bilateral agreements</b>	76
49A   Consultation on draft agreement.....	76
50    Minister may only enter into agreement if prescribed criteria are met.....	77
51    Agreements relating to declared World Heritage properties.....	77
52    Agreements relating to declared Ramsar wetlands .....	77
53    Agreements relating to listed threatened species and ecological communities .....	78
54    Agreements relating to migratory species.....	79
55    Agreements relating to nuclear actions.....	80
56    Agreements relating to prescribed actions .....	80
<b>Division 3—Suspending and ending the effect of bilateral     agreements</b>	82
<b>Subdivision A—Suspension and cancellation of effect</b>	82
57    Representations about suspension or cancellation .....	82
58    Consultation before cancellation or suspension.....	83
59    Suspension or cancellation .....	83
60    Emergency suspension of effect of bilateral agreement.....	85
61    Cancellation during suspension .....	86
62    Revocation of notice of suspension or cancellation.....	86

---

---

63	Cancellation or suspension at request of other party .....	87
64	Cancellation or suspension of bilateral agreement does not affect certain actions.....	88
<b>Subdivision B—Expiry of bilateral agreements</b>		89
65	Expiry and review of bilateral agreements .....	89
65A	Expiry of bilateral agreement does not affect certain actions .....	89
<b>Chapter 4—Environmental assessments and approvals</b>		91
<b>Part 6—Simplified outline of this Chapter</b>		91
66	Simplified outline of this Chapter.....	91
<b>Part 7—Deciding whether approval of actions is needed</b>		93
<b>Division 1—Referral of proposals to take action</b>		93
67	What is a <i>controlled action</i> ?.....	93
68	Referral by person proposing to take action .....	93
69	State or Territory may refer proposal to Minister .....	94
70	Minister may request referral of proposal.....	94
71	Commonwealth agency may refer proposal to Minister .....	95
72	Form and content of referrals .....	95
73	Informing person proposing to take action of referral .....	95
74	Inviting provision of information on referred proposal .....	95
<b>Division 2—Ministerial decision whether action needs approval</b>		97
75	Does the proposed action need approval?.....	97
76	Minister may request more information for making decision.....	99
77	Notice and reasons for decision.....	99
78	Reconsideration of decision.....	101
79	Reconsideration of decision on request by a State or Territory .....	103
<b>Part 8—Assessing impacts of controlled actions</b>		105
<b>Division 1—Simplified outline of this Part</b>		105
80	Simplified outline of this Part.....	105
<b>Division 2—Application of this Part</b>		106
81	Application .....	106
82	What are the <i>relevant impacts</i> of an action? .....	106
83	This Part does not apply if action covered by bilateral agreement .....	107

---

---

84	This Part does not apply if action covered by declaration .....	107
<b>Division 3—Decision on assessment approach</b>		<b>110</b>
<b>Subdivision A—Simplified outline of this Division</b>		<b>110</b>
85	Simplified outline of this Division.....	110
<b>Subdivision B—Deciding on approach for assessment</b>		<b>110</b>
86	Designated proponent must provide preliminary information for assessment.....	110
87	Minister must decide on approach for assessment.....	111
88	Timing of decision on assessment approach.....	113
89	Minister may request more information for making decision .....	114
90	Directing an inquiry after starting an assessment .....	114
91	Notice of decision on assessment approach.....	115
<b>Division 4—Assessment on preliminary documentation</b>		<b>117</b>
92	Application .....	117
93	Public comment on information included in referral .....	117
94	Revised documentation .....	117
95	Assessment report.....	118
<b>Division 5—Public environment reports</b>		<b>120</b>
96	Application .....	120
97	Minister must prepare guidelines for draft public environment report .....	120
98	Designated proponent must invite comment on draft public environment report .....	121
99	Finalising public environment report.....	122
100	Assessment report.....	123
<b>Division 6—Environmental impact statements</b>		<b>125</b>
101	Application .....	125
102	Minister must prepare guidelines for draft environmental impact statement.....	125
103	Designated proponent must invite comment on draft environmental impact statement .....	126
104	Finalising draft environmental impact statement.....	127
105	Assessment report.....	128
<b>Division 7—Inquiries</b>		<b>130</b>
<b>Subdivision A—Preliminary</b>		<b>130</b>
106	Simplified outline .....	130
<b>Subdivision B—Establishment of inquiries</b>		<b>130</b>

---



---

107	Appointing commissioners and setting terms of reference .....	130
108	Publicising inquiry.....	131
<b>Subdivision C—Conduct of inquiries</b>		132
109	Procedure of inquiries.....	132
110	Inquiry to be public .....	132
111	Calling witnesses.....	133
112	Dealing with witnesses .....	134
113	Dealing with documents given to commission .....	135
114	Inspections of land, buildings and places .....	136
115	Entering premises by consent .....	136
116	Entering premises under warrant .....	137
117	Warrants by telephone or other electronic means .....	138
118	Identity cards .....	140
119	Contempt .....	140
120	Protection of commissioners and witnesses.....	141
<b>Subdivision D—Inquiry reports</b>		143
121	Timing of report .....	143
122	Publication of report.....	143
<b>Subdivision E—Commissioners’ terms and conditions</b>		143
123	Basis of appointment .....	143
124	Remuneration .....	144
125	Leave of absence .....	144
126	Resignation.....	144
127	Termination of appointment .....	144
128	Disclosure of interests .....	145
129	Other terms and conditions.....	146
<b>Part 9—Approval of actions</b>		147
<b>Division 1—Decisions on approval and conditions</b>		147
<b>Subdivision A—General</b>		147
130	Timing of decision on approval.....	147
131	Inviting comments from other Ministers before decision .....	150
132	Requesting further information for approval decision .....	150
133	Grant of approval.....	151
134	Attaching conditions to approval.....	153
135	Certain approvals and conditions must not give preference .....	155
<b>Subdivision B—Considerations for approvals and conditions</b>		156
136	General considerations .....	156

---

---

137	Requirements for decisions about World Heritage .....	157
138	Requirements for decisions about Ramsar wetlands.....	157
139	Requirements for decisions about threatened species and endangered communities .....	157
140	Requirements for decisions about migratory species.....	158
140A	No approval for certain nuclear installations .....	158
<b>Division 2—Requirement to comply with conditions</b>		159
142	Compliance with conditions on approval .....	159
142A	Offence of breaching conditions on approval.....	159
<b>Division 3—Variation of conditions and suspension and revocation of approvals</b>		161
143	Variation of conditions attached to approval .....	161
144	Suspension of approval.....	162
145	Revocation of approval.....	163
145A	Reinstating suspended or revoked approval.....	164
<b>Division 4—Transfer of approvals</b>		167
145B	Transfer with Minister’s consent .....	167
<b>Part 10—Strategic assessments</b>		169
<b>Division 1—Strategic assessments generally</b>		169
146	Minister may agree on strategic assessment .....	169
<b>Division 2—Assessment of Commonwealth-managed fisheries</b>		172
147	Simplified outline of this Division.....	172
148	Assessment before management plan is determined.....	173
149	Assessment before determination that no plan required .....	173
150	Assessment of all fisheries without plans must be started within 5 years .....	174
151	Assessment of all Torres Strait fisheries to be started within 5 years .....	175
152	Further assessment if impacts greater than previously assessed .....	175
153	Minister must make declaration if he or she endorses plan or policy.....	176
154	This Division does not limit Division 1 .....	177
<b>Part 11—Miscellaneous rules about assessments and approvals</b>		178
<b>Division 1—Rules about timing</b>		178
155	This Chapter ceases to apply to lapsed proposals .....	178
156	General rules about time limits.....	179

---

---

<b>Division 2—Actions in area offshore from a State or the Northern Territory</b>	180
157    Actions treated as though they were in a State or the Northern Territory .....	180
<b>Division 3—Exemptions</b>	181
158    Exemptions from Part 3 and this Chapter .....	181
<b>Division 4—Application of Chapter to actions that are not controlled actions</b>	182
<b>Subdivision A—Minister’s advice on authorising actions</b>	182
159    Simplified outline of this Subdivision .....	182
160    Requirement to take account of Minister’s advice.....	183
161    Seeking the Minister’s advice.....	185
162    Assessment of the action .....	186
163    Providing advice.....	186
164    Reporting on response to advice.....	187
<b>Subdivision B—Assessment of applications for permits relating to whales, dolphins and porpoises</b>	187
165    Assessment of applications for permits relating to whales, dolphins and porpoises .....	187
<b>Subdivision C—Assessment under agreement with State or Territory</b>	188
166    This Subdivision applies if Ministers agree it should .....	188
167    Making an agreement .....	189
168    Content of an agreement.....	190
169    Application of a Division of Part 8.....	192
170    Application of Division 1 of Part 10.....	193
<b>Division 5—Publication of information relating to assessments</b>	194
170A    Publication of information relating to assessments.....	194
<b>Chapter 5—Conservation of biodiversity</b>	196
<b>Part 12—Identifying and monitoring biodiversity and making bioregional plans</b>	196
<b>Division 1—Identifying and monitoring biodiversity</b>	196
171    Identifying and monitoring biodiversity .....	196
172    Inventories of listed threatened species etc. on Commonwealth land.....	197

---

---

173	Surveys of cetaceans, listed threatened species etc. in Commonwealth marine areas .....	197
174	Inventories and surveys to be updated .....	198
175	Obligations under this Act unaffected by lack of inventories or surveys .....	198
<b>Division 2—Bioregional plans</b>		199
176	Bioregional plans .....	199
177	Obligations under this Act unaffected by lack of bioregional plans .....	200
<b>Part 13—Species and communities</b>		201
<b>Division 1—Listed threatened species and ecological communities</b>		201
<b>Subdivision A—Listing</b>		201
178	Listing of threatened species .....	201
179	Categories of threatened species .....	202
180	Native species of marine fish .....	203
181	Listing of threatened ecological communities .....	203
182	Critically endangered, endangered and vulnerable communities .....	204
183	Listing of key threatening processes .....	205
184	Minister may amend lists .....	205
185	Maintaining the lists in up-to-date condition .....	206
186	Amending list of threatened native species .....	207
187	Amending list of ecological communities .....	208
188	Amending list of key threatening processes .....	208
189	Minister must consider advice from Scientific Committee .....	209
190	Scientific Committee may provide advice about species or communities becoming threatened .....	210
191	Nomination of threatened species etc. ....	210
192	Rediscovery of threatened species that were extinct .....	212
193	Species posing a serious threat to human health .....	212
194	Minister to make lists available to the public .....	212
<b>Subdivision B—Permit system</b>		213
195	Subdivision does not apply to cetaceans .....	213
196	Recklessly killing or injuring member of listed threatened species or community .....	213
196A	Strict liability for killing or injuring member of listed threatened species or community .....	213

---

---

196B	Recklessly taking etc. member of listed threatened species or community .....	214
196C	Strict liability for taking etc. member of listed threatened species or community .....	215
196D	Trading etc. member of listed threatened species or community taken in Commonwealth area .....	215
196E	Strict liability for trading etc. member of listed threatened species or community taken in Commonwealth area.....	216
197	Certain actions are not offences.....	216
198	Operation of sections 18 and 18A not affected.....	217
199	Failing to notify taking of listed threatened species or listed ecological community .....	218
200	Application for permits.....	219
201	Minister may issue permits.....	220
202	Conditions of permits .....	221
203	Contravening conditions of a permit .....	221
204	Authorities under permits .....	221
205	Transfer of permits .....	222
206	Suspension or cancellation of permits .....	222
206A	Review of decisions about permits .....	222
207	Fees .....	223
<b>Subdivision BA—Protecting critical habitat</b>		223
207A	Register of critical habitat.....	223
207B	Offence of knowingly damaging critical habitat.....	223
207C	Sale or lease of Commonwealth land containing critical habitat.....	224
<b>Subdivision C—Miscellaneous</b>		225
208	Regulations.....	225
<b>Division 2—Migratory species</b>		226
<b>Subdivision A—Listing</b>		226
209	Listed migratory species.....	226
<b>Subdivision B—Permit system</b>		227
210	Subdivision does not apply to members of listed threatened species or cetaceans.....	227
211	Recklessly killing or injuring member of listed migratory species .....	227
211A	Strict liability for killing or injuring member of listed migratory species.....	227
211B	Recklessly taking etc. member of listed migratory species .....	228

---

---

211C	Strict liability for taking etc. member of listed migratory species .....	229
211D	Trading etc. member of listed migratory species taken in Commonwealth area.....	229
211E	Strict liability for trading etc. member of listed migratory species taken in Commonwealth area .....	230
212	Certain actions are not offences.....	230
213	Operation of sections 20 and 20A not affected.....	231
214	Failing to notify taking etc. of listed migratory species.....	231
215	Application for permits.....	233
216	Minister may issue permits.....	233
217	Conditions of permits .....	234
218	Contravening conditions of a permit .....	235
219	Authorities under permits .....	235
220	Transfer of permits .....	236
221	Suspension or cancellation of permits .....	236
221A	Review of decisions about permits .....	236
222	Fees .....	236
<b>Subdivision C—Miscellaneous</b>		236
223	Regulations.....	236
<b>Division 3—Whales and other cetaceans</b>		238
<b>Subdivision A—Application of Division</b>		238
224	Application of Division .....	238
<b>Subdivision B—Australian Whale Sanctuary</b>		239
225	Australian Whale Sanctuary .....	239
226	Prescribed waters.....	239
227	Coastal waters.....	239
228	Minister may make declaration for coastal waters.....	240
<b>Subdivision C—Offences</b>		240
229	Recklessly killing or injuring a cetacean .....	240
229A	Strict liability for killing or injuring a cetacean .....	241
229B	Intentionally taking etc. a cetacean.....	241
229C	Strict liability for taking etc. a cetacean.....	242
229D	Treating an illegally killed or taken cetacean .....	243
230	Possession of cetaceans .....	243
231	Certain actions are not offences.....	244
232	Action to be taken on killing etc. cetaceans.....	245
<b>Subdivision D—Offences relating to unlawful importation</b>		246

---

---

233	Possession of unlawfully imported cetaceans .....	246
234	Treating unlawfully imported cetaceans .....	246
235	Sections 233 and 234 do not apply to certain actions .....	247
<b>Subdivision E—Miscellaneous offences</b>		247
236	Offences relating to foreign whaling vessels .....	247
<b>Subdivision F—Permit system</b>		249
237	Application for permits .....	249
238	Minister may issue permits .....	249
239	Conditions of permits .....	251
240	Contravening conditions of a permit .....	251
241	Authorities under permits .....	251
242	Transfer of permits .....	252
243	Suspension or cancellation of permits .....	252
243A	Review of decisions about permits .....	252
244	Fees .....	252
<b>Subdivision G—Miscellaneous</b>		253
245	Minister may accredit plans of management .....	253
246	Vesting of whales in Commonwealth .....	253
247	Regulations .....	254
<b>Division 4—Listed marine species</b>		255
<b>Subdivision A—Listing</b>		255
248	Listed marine species .....	255
249	Minister may amend list .....	255
250	Adding marine species to the list .....	256
251	Minister must consider advice from Scientific Committee .....	257
252	Minister to make lists available to the public .....	257
<b>Subdivision B—Permit system</b>		258
253	Subdivision does not apply to members of certain species and cetaceans .....	258
254	Recklessly killing or injuring member of listed marine species .....	258
254A	Strict liability for killing or injuring member of listed marine species .....	258
254B	Recklessly taking etc. member of listed marine species .....	259
254C	Strict liability for taking etc. member of listed marine species .....	259
254D	Trading etc. member of listed marine species taken in Commonwealth area .....	260

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254E	Strict liability for trading etc. member of listed marine species taken in Commonwealth area.....	261
255	Certain actions are not offences.....	261
256	Failing to notify taking etc. of listed marine wildlife.....	262
257	Application for permits.....	263
258	Minister may issue permits.....	264
259	Conditions of permits .....	265
260	Contravening conditions of a permit .....	265
261	Authorities under permits .....	266
262	Transfer of permits .....	266
263	Suspension or cancellation of permits .....	266
263A	Review of decisions about permits .....	267
264	Fees .....	267
<b>Subdivision C—Miscellaneous</b>		267
265	Minister may accredit plans of management .....	267
266	Regulations.....	268
<b>Division 4A—Register for consultations about permits</b>		269
266A	Register for consultation about permit applications.....	269
<b>Division 5—Plans</b>		270
<b>Subdivision A—Recovery plans and threat abatement plans</b>		270
267	Simplified outline of this Subdivision .....	270
268	Compliance with recovery plans and threat abatement plans .....	270
269	Implementing recovery and threat abatement plans.....	270
269A	Making or adopting a recovery plan.....	271
270	Content of recovery plans.....	273
270A	Decision whether to have a threat abatement plan.....	275
270B	Making or adopting a threat abatement plan.....	277
271	Content of threat abatement plans .....	279
272	Eradication of non-native species .....	280
273	Ensuring plans are in force .....	280
274	Scientific Committee to advise on plans.....	283
275	Consultation on plans .....	283
276	Consideration of comments .....	284
277	Adoption of State plans .....	285
278	Publication, review and variation of plans.....	285
279	Variation of plans by the Minister .....	286
280	Variation by a State or Territory of joint plans and plans adopted by the Minister .....	286

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281	Commonwealth assistance.....	287
282	Scientific Committee to advise on assistance .....	288
283	Plans may cover more than one species etc. ....	288
283A	Revoking a threat abatement plan.....	289
284	Reports on preparation and implementation of plans .....	289
<b>Subdivision B—Wildlife conservation plans</b>		289
285	Wildlife conservation plans .....	289
286	Acting in accordance with wildlife conservation plans .....	290
287	Content of wildlife conservation plans .....	291
288	Eradication of non-native species .....	292
289	Scientific Committee to advise on scheduling of plans .....	292
290	Consultation on plans .....	292
291	Consideration of comments .....	293
292	Adoption of State plans .....	293
293	Publication, review and variation of plans.....	294
294	Variation of plans by the Minister .....	294
295	Variation by a State or Territory of joint plans and plans adopted by the Minister .....	295
296	Commonwealth assistance.....	296
297	Plans may cover more than one species etc. ....	296
298	Reports on preparation and implementation of plans .....	297
<b>Subdivision C—Miscellaneous</b>		297
299	Wildlife conservation plans cease to have effect .....	297
300	Document may contain more than one plan .....	297
300A	State and Territory laws not affected .....	297
<b>Division 6—Access to biological resources</b>		298
301	Control of access to biological resources.....	298
<b>Division 6A—Control of non-native species</b>		299
301A	Regulations for control of non-native species.....	299
<b>Division 7—Aid for conservation of species in foreign countries</b>		300
302	Aid for conservation of species in foreign countries .....	300
<b>Division 8—Miscellaneous</b>		301
303	Regulations.....	301
303A	Exemptions from this Part .....	301
<b>Part 14—Conservation agreements</b>		303
304	Object of this Part.....	303
305	Minister may enter into conservation agreements .....	303

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---

306	Content of conservation agreements.....	304
307	Conservation agreements to be legally binding .....	306
308	Variation and termination of conservation agreements.....	306
309	Publication of conservation agreements .....	307
310	List of conservation agreements .....	308
311	Commonwealth, State and Territory laws .....	309
312	Minister must not give preference .....	309
<b>Part 15—Protected areas</b>		<b>310</b>
<b>Division 1—Managing World Heritage properties</b>		<b>310</b>
<b>Subdivision A—Simplified outline of this Division</b>		<b>310</b>
313	Simplified outline of this Division.....	310
<b>Subdivision B—Seeking agreement on World Heritage listing</b>		<b>311</b>
314	Special provisions relating to World Heritage nominations .....	311
<b>Subdivision C—Notice of submission of property for listing</b>		<b>311</b>
315	Minister must give notice of submission of property for listing etc. ....	311
<b>Subdivision D—Plans for listed World Heritage properties in Commonwealth areas</b>		<b>312</b>
316	Making plans .....	312
317	Notice of plans.....	314
318	Compliance with plans .....	314
319	Review of plans every 5 years .....	314
<b>Subdivision E—Managing World Heritage properties in States and self-governing Territories</b>		<b>314</b>
320	Application .....	314
321	Co-operating to prepare and implement plans .....	315
322	Commonwealth responsibilities.....	315
<b>Subdivision F—Australian World Heritage management principles</b>		<b>316</b>
323	Australian World Heritage management principles.....	316
<b>Subdivision G—Assistance for protecting World Heritage properties</b>		<b>316</b>
324	Commonwealth assistance for protecting declared World Heritage properties .....	316
<b>Division 2—Managing wetlands of international importance</b>		<b>317</b>
<b>Subdivision A—Simplified outline of this Division</b>		<b>317</b>
325	Simplified outline of this Division.....	317

---

---

<b>Subdivision B—Seeking agreement on Ramsar designation</b>	318
326 Commonwealth must seek agreement before designation .....	318
<b>Subdivision C—Notice of designation of wetland</b>	318
327 Minister must give notice of designation of wetland etc. ....	318
<b>Subdivision D—Plans for listed wetlands in Commonwealth areas</b>	319
328 Making plans .....	319
329 Notice of plans.....	321
330 Compliance with plans .....	321
331 Review of plans every 5 years .....	321
<b>Subdivision E—Management of wetlands in States and self-governing Territories</b>	321
332 Application .....	321
333 Co-operating to prepare and implement plans .....	322
334 Commonwealth responsibilities.....	322
<b>Subdivision F—Australian Ramsar management principles</b>	322
335 Australian Ramsar management principles .....	322
<b>Subdivision G—Assistance for protecting wetlands</b>	323
336 Commonwealth assistance for protecting declared Ramsar wetlands.....	323
<b>Division 3—Managing Biosphere reserves</b>	324
337 Definition of <i>Biosphere reserve</i> .....	324
338 Planning for management of Biosphere reserves.....	324
339 Commonwealth activities in Biosphere reserves .....	324
340 Australian Biosphere reserve management principles .....	325
341 Commonwealth assistance for protecting Biosphere reserves .....	325
<b>Division 4—Commonwealth reserves</b>	326
<b>Subdivision A—Simplified outline of this Division</b>	326
342 Simplified outline of this Division.....	326
<b>Subdivision B—Declaring and revoking Commonwealth reserves</b>	327
343 Simplified outline of this Subdivision .....	327
344 Declaring Commonwealth reserves .....	327
345 Extent of Commonwealth reserve.....	329
345A Commonwealth usage rights vest in Director .....	329
346 Content of Proclamation declaring Commonwealth reserve.....	330
347 Assigning Commonwealth reserves and zones to IUCN categories.....	331
348 Australian IUCN reserve management principles.....	332

---

---

349	Proclamations assigning reserve or zone to wilderness area category may affect management .....	332
350	Revocation and alteration of Commonwealth reserves.....	333
351	Report before making Proclamation.....	334
352	What happens to Director's usage rights when Commonwealth reserve is revoked.....	336
<b>Subdivision C—Activities in Commonwealth reserves</b>		<b>336</b>
353	Simplified outline of this Subdivision .....	336
354	Activities that may be carried on only under management plan.....	337
355	Limits on mining operations in Commonwealth reserves.....	338
356	Regulations controlling activities relating to Commonwealth reserves.....	339
356A	Charges for activities in Commonwealth reserves.....	342
357	Managing Commonwealth reserves while a management plan is not in operation .....	342
358	Restriction on disposal of Director's interests in Commonwealth reserves.....	343
359	Prior usage rights relating to Commonwealth reserves continue to have effect.....	344
359A	Traditional use of Commonwealth reserves by indigenous persons.....	345
360	Activities in wilderness areas .....	345
<b>Subdivision D—Complying with management plans for Commonwealth reserves</b>		<b>347</b>
361	Simplified outline of this Subdivision .....	347
362	Commonwealth and Commonwealth agencies to comply with management plan for Commonwealth reserve.....	347
363	Resolving disagreement between land council and Director over implementation of plan.....	348
364	Resolving disagreement between Director and Board over implementation of plan.....	349
<b>Subdivision E—Approving management plans for Commonwealth reserves</b>		<b>350</b>
365	Simplified outline of this Subdivision .....	350
366	Obligation to prepare management plans for Commonwealth reserves.....	351
367	Content of a management plan for a Commonwealth reserve .....	352
368	Steps in preparing management plans for Commonwealth reserves.....	354

---

---

369	Resolving disagreements between Director and Board in planning process .....	357
370	Approval of management plans for Commonwealth reserves .....	358
371	Approved management plans are disallowable instruments .....	359
372	Amendment and revocation of management plans for Commonwealth reserves.....	360
373	Expiry of management plans for Commonwealth reserves .....	360
<b>Subdivision F—Boards for Commonwealth reserves on indigenous people’s land</b>		
374	Simplified outline of this Subdivision .....	360
375	Application .....	361
376	Functions of a Board for a Commonwealth reserve.....	361
377	Minister must establish Board if land council or traditional owners agree.....	361
378	Altering the constitution of a Board or abolishing a Board .....	362
379	Appointment of Board members .....	364
380	Terms and conditions .....	364
381	Remuneration .....	365
382	Termination of appointments of Board members .....	365
383	Procedure of a Board .....	367
<b>Subdivision G—Special rules for some Commonwealth reserves in the Northern Territory or Jervis Bay Territory</b>		
384	Simplified outline of this Subdivision .....	368
385	Activities in Commonwealth reserve without management plan.....	368
386	What are the <i>Kakadu region</i> and the <i>Uluru region</i> ? .....	369
387	No mining operations in Kakadu National Park .....	369
388	Establishment and development of townships in the Kakadu region and Uluru region.....	370
389	Planning for townships .....	371
390	Special rules to protect Aboriginal interests in planning process.....	372
390A	Appointment of Northern Territory nominee to Board.....	374
<b>Division 5—Conservation zones</b>		
390B	Simplified outline of this Division.....	376
390C	Object of this Division.....	376
390D	Proclamation of conservation zones .....	376
390E	Regulating activities generally .....	377
390F	Charges for activities in conservation zones.....	379
390G	Other laws and regulations made for this Division.....	379

---

---

390H	Prior usage rights relating to conservation zones continue to have effect .....	380
390J	Revoking and altering conservation zones .....	381
<b>Chapter 6—Administration</b>		<b>382</b>
<b>Part 16—Application of precautionary principle in decision-making</b>		<b>382</b>
391	Minister must consider precautionary principle in making decisions .....	382
<b>Part 17—Enforcement</b>		<b>384</b>
<b>Division 1—Wardens, rangers and inspectors</b>		<b>384</b>
<b>Subdivision A—Wardens and rangers</b>		<b>384</b>
392	Appointment of wardens and rangers .....	384
393	Arrangements for certain officers or employees to exercise powers etc. of wardens or rangers .....	384
394	Wardens <i>ex officio</i> .....	385
395	Identity cards .....	385
<b>Subdivision B—Inspectors</b>		<b>386</b>
396	Appointment of inspectors.....	386
397	Inspectors <i>ex officio</i> .....	386
398	Arrangements for State and Territory officers to be inspectors.....	386
399	Identity cards .....	387
<b>Subdivision C—Miscellaneous</b>		<b>387</b>
400	Regulations may give wardens, rangers and inspectors extra powers, functions and duties.....	387
401	Impersonating authorised officers and rangers .....	388
402	Offences against authorised officers and rangers .....	389
<b>Division 2—Boarding of vessels etc. and access to premises by consent</b>		<b>391</b>
403	Boarding of vessels etc. by authorised officers.....	391
404	Authorised officers to produce identification .....	393
405	Access to premises .....	394
406	Powers of authorised officers .....	394
<b>Division 3—Monitoring of compliance</b>		<b>397</b>
407	Monitoring powers .....	397
408	Monitoring searches with occupier's consent.....	397

---

---

409	Monitoring warrants .....	399
410	Details of monitoring warrant to be given to occupier etc. ....	400
411	Occupier entitled to be present during search .....	400
412	Announcement before entry .....	401
412A	Other powers when on premises under monitoring warrant .....	401
<b>Division 4—Search warrants</b>		<b>403</b>
413	When search warrants can be issued.....	403
414	Statements in warrants.....	404
415	Powers of magistrate .....	406
416	Warrants by telephone or other electronic means .....	406
417	The things that are authorised by a search warrant .....	408
418	Availability of assistance, and use of force, in executing a warrant.....	410
419	Details of warrant to be given to occupier etc. ....	411
420	Specific powers available to person executing warrant .....	411
421	Use of equipment to examine or process things .....	412
422	Use of electronic equipment at premises .....	413
423	Compensation for damage to electronic equipment.....	415
424	Copies of seized things to be provided .....	416
425	Occupier entitled to be present during search.....	416
426	Receipts for things seized under warrant .....	417
427	Restrictions on personal searches .....	417
428	When a thing is in the possession of a person.....	417
<b>Division 5—Stopping and searching aircraft, vehicles or vessels</b>		<b>418</b>
429	Searches of aircraft, vehicles or vessels without warrant in emergency situations .....	418
<b>Division 6—Arrest and related matters</b>		<b>420</b>
430	Powers of arrest .....	420
431	Power to conduct a frisk search of an arrested person .....	420
432	Power to conduct an ordinary search of an arrested person .....	421
433	Power to conduct search of arrested person’s premises.....	421
<b>Division 7—Miscellaneous provisions about searches, entry to premises, warrants etc.</b>		<b>422</b>
434	Conduct of ordinary searches and frisk searches .....	422
435	Announcement before entry .....	422
436	Offence of making false statements in warrants .....	422
437	Offences relating to telephone warrants .....	422
438	Retention of things which are seized .....	423

---

---

439	Magistrate may permit a thing to be retained .....	424
440	Law relating to legal professional privilege not affected .....	425
441	Other laws about search, arrest etc. not affected.....	425
442	Persons to assist authorised officers .....	426
<b>Division 8—Power to search goods, baggage etc.</b>		428
443	Power to search goods, baggage etc. ....	428
<b>Division 9—Power to ask for names and addresses</b>		430
444	Authorised person may ask for person’s name and address.....	430
<b>Division 10—Seizure and forfeiture etc.</b>		431
<b>Subdivision A—Seizure of goods</b>		431
445	Seizure of goods .....	431
446	Retention of goods that have been seized .....	431
447	Disposal of goods if there is no owner or owner cannot be located .....	432
448	Release of goods that have been seized .....	433
<b>Subdivision B—Immediate disposal of seized items</b>		433
449	Immediate disposal of seized items .....	433
<b>Subdivision C—Court-ordered forfeiture</b>		434
450	Court-ordered forfeiture .....	434
<b>Subdivision D—Dealings in forfeited items</b>		435
451	Dealings in forfeited items .....	435
<b>Subdivision E—Delivery of forfeited items to the Commonwealth</b>		435
452	Delivery of forfeited items to the Commonwealth .....	435
<b>Subdivision F—Keeping of organisms that have been seized</b>		436
453	Keeping of organisms retained under this Part .....	436
454	Recovery of costs of storing or keeping organisms .....	436
<b>Subdivision G—Rescuing goods</b>		437
455	Rescuing goods.....	437
456	Breaking or destroying goods or documents to prevent seizure etc. ....	437
<b>Division 11—Powers of pursuit</b>		438
457	Power to pursue persons etc. ....	438
<b>Division 12—Environmental audits</b>		439
458	Directed environmental audits .....	439
459	Appointment of auditor and carrying out of audit .....	440
460	Nature of directed environmental audit .....	440

---



---

461	Audit reports.....	441
462	Directed environmental audits do not affect other audit obligations .....	442
<b>Division 13—Conservation orders</b>		443
<b>Subdivision A—Simplified outline</b>		443
463	Simplified outline of this Division.....	443
<b>Subdivision B—Making and reviewing conservation orders</b>		443
464	Minister may make conservation orders .....	443
465	Duration of conservation orders .....	444
466	Reviews of conservation orders.....	445
467	Publication of conservation orders .....	445
468	Application for reconsideration of conservation orders or decisions on review .....	446
469	Reconsideration of conservation orders and decisions on review .....	447
<b>Subdivision C—Complying with conservation orders</b>		447
470	Contravening conservation orders is an offence .....	447
471	Minister to consider proposed actions etc.....	448
472	Contents of notices of advice.....	448
473	Review by the Administrative Appeals Tribunal.....	449
474	Assistance in complying with conservation orders.....	449
<b>Division 14—Injunctions</b>		450
475	Injunctions for contravention of the Act.....	450
476	Injunctions for contraventions of conservation agreements.....	452
477	Discharge of injunctions .....	453
478	No undertakings as to damages .....	453
479	Certain considerations for granting injunctions not relevant .....	453
480	Powers conferred are in addition to other powers of the Court.....	454
<b>Division 15—Civil penalties</b>		455
<b>Subdivision A—Obtaining an order for a civil penalty</b>		455
481	Federal Court may order person to pay pecuniary penalty for contravening civil penalty provision.....	455
482	What is a <i>civil penalty provision</i> ?.....	456
483	Contravening a civil penalty provision is not an offence.....	456
484	Persons involved in contravening civil penalty provision .....	456
485	Recovery of a pecuniary penalty .....	457
486	Gathering information for application for pecuniary penalty .....	457

---

---

<b>Subdivision B—Civil penalty proceedings and criminal proceedings</b>	457
486A Civil proceedings after criminal proceedings .....	457
486B Criminal proceedings during civil proceedings .....	458
486C Criminal proceedings after civil proceedings .....	458
486D Evidence given in proceedings for penalty not admissible in criminal proceedings .....	458
<b>Division 16—Review of administrative decisions</b>	459
487 Extended standing for judicial review .....	459
488 Applications on behalf of unincorporated organisations.....	460
<b>Division 17—Duty to provide accurate information</b>	461
489 Providing false or misleading information to obtain approval or permit .....	461
490 Providing false or misleading information in response to a condition on an approval or permit.....	462
491 Providing false or misleading information to authorised officer etc.....	463
<b>Division 18—Liability of executive officers for corporations</b>	464
493 Who is an <i>executive officer</i> of a body corporate? .....	464
494 Civil penalties for executive officers of bodies corporate.....	464
495 Criminal liability of executive officers of bodies corporate.....	464
496 Did an executive officer take reasonable steps to prevent contravention? .....	466
<b>Division 19—Infringement notices</b>	468
497 Infringement notices.....	468
<b>Division 20—Publicising contraventions</b>	469
498 Minister may publicise contraventions of this Act or the regulations .....	469
<b>Division 21—Immunity of officers</b>	470
498A Immunity of officers and assistants .....	470
<b>Part 18—Remedying environmental damage</b>	471
499 Commonwealth powers to remedy environmental damage .....	471
500 Liability for loss or damage caused by contravention .....	472
501 Other powers not affected.....	473

---

---

<b>Part 19—Organisations</b>	474
<b>Division 1—Establishment and functions of the Threatened Species Scientific Committee</b>	474
502 Establishment .....	474
503 Functions of the Committee .....	474
<b>Division 2—Establishment and functions of the Biological Diversity Advisory Committee</b>	475
504 Establishment .....	475
505 Functions of the Committee .....	476
<b>Division 2A—Indigenous Advisory Committee</b>	477
505A Establishment .....	477
505B Functions of the Committee .....	477
<b>Division 3—Members and procedures of Committees</b>	478
506 Application .....	478
507 Terms and conditions .....	478
508 Remuneration .....	478
509 Termination of appointments of Committee members .....	479
510 Procedure of a Committee .....	480
<b>Division 4—Advisory committees</b>	482
511 Minister may establish advisory committees .....	482
512 Appointments .....	482
513 Members of advisory committees .....	482
514 Committee procedure .....	483
<b>Division 5—Director of National Parks</b>	484
<b>Subdivision A—Establishment, functions and powers</b>	484
514A Continuation .....	484
514B Functions .....	484
514C Powers .....	485
514D Requirements relating to functions and powers .....	486
<b>Subdivision B—Constitution of Director of National Parks</b>	487
514E Constitution .....	487
514F Appointment .....	487
514G Acting appointments .....	488
<b>Subdivision C—Terms and conditions of appointment</b>	488
514H Term of office .....	488
514J Remuneration .....	489

---

---

514K	Outside employment.....	489
514L	Disclosure of interests .....	489
514M	Leave of absence .....	489
514N	Resignation.....	489
514P	Termination .....	490
514Q	Other terms and conditions.....	490
<b>Subdivision D—Australian National Parks Fund</b>		490
514R	Australian National Parks Fund.....	490
514S	Payments to Australian National Parks Fund .....	491
514T	Application of money .....	491
<b>Subdivision E—Accountability</b>		492
514U	Modification of the <i>Commonwealth Authorities and Companies Act 1997</i> .....	492
514V	Extra matters to be included in annual report .....	492
<b>Subdivision F—Miscellaneous</b>		492
514W	Exemption from taxation .....	492
514X	Changes in office of Director .....	493
<b>Part 20—Delegation</b>		494
515	Delegation .....	494
<b>Part 21—Reporting</b>		495
<b>Division 1—Annual reports</b>		495
516	Annual report on operation of Act.....	495
516A	Annual reports to deal with environmental matters .....	495
<b>Division 2—State of the environment reports</b>		498
516B	State of the environment reports .....	498
<b>Chapter 7—Miscellaneous</b>		499
<b>Part 22—Miscellaneous</b>		499
517	Determinations of species.....	499
518	Non-compliance with time limits .....	499
519	Compensation for acquisition of property .....	500
520	Regulations.....	500
521	Fees and charges must not be taxes .....	501
522	Financial assistance etc. to be paid out of appropriated money .....	501
522A	Review of operation of Act .....	502

---

---

522B	This Act does not apply to certain actions with prior approval .....	502
<b>Chapter 8—Definitions</b>		503
<b>Part 23—Definitions</b>		503
<b>Division 1—Some definitions relating to particular topics</b>		503
<b>Subdivision A—Actions</b>		503
523	Actions .....	503
524	Things that are not <i>actions</i> .....	503
524A	Provision of grant funding is not an <i>action</i> .....	504
524B	Significant impact of actions .....	504
<b>Subdivision B—Areas</b>		505
525	Commonwealth areas .....	505
<b>Subdivision C—Entities</b>		506
526	Subsidiaries of bodies corporate .....	506
<b>Subdivision D—Criminal law</b>		506
527	Convictions.....	506
<b>Division 2—General list of definitions</b>		507
528	Definitions .....	507





# **Environment Protection and Biodiversity Conservation Act 1999**

**No. 91, 1999**

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

*[Assented to 16 July 1999]*

The Parliament of Australia enacts:

# **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
  - (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
    - (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

Section 3A

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- (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
- (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;
- (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 citizens; and
  - (b) persons who:
    - (i) are not Australian citizens; and
    - (ii) hold permanent visas under the *Migration Act 1958*; and
    - (iii) are domiciled in Australia or an external Territory; and
  - (c) corporations incorporated in Australia or an external Territory; 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).

Section 5

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*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*.

*Definitions*

- (5) In this Act:

***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 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.

## **7 Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

## **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.

Section 10

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*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.

*Australian Heritage Commission Act 1975 does not apply*

- (3) The making of a decision, or the giving of an approval, under this Act is not an action for the purposes of section 30 of the *Australian Heritage Commission Act 1975*.

**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.

## **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 a plan for managing the Great Barrier Reef.

## **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).



(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 Act:

***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:

**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

**Division 1** Requirements relating to matters of national environmental significance

Section 14

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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:

- (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.

Section 15

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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 is guilty of an offence if:
  - (a) the person takes an action; and

Section 15A

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- (b) the action results or will result in a significant impact on the world heritage values of a declared World Heritage property.

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

- (2) A person is guilty of 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 declared World Heritage property and the person is reckless as to that fact.

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

- (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 be guilty of an offence against section 495.

- (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).

**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

**Division 1** Requirements relating to matters of national environmental significance

Section 16

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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—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.

## **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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**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

**Division 1** Requirements relating to matters of national environmental significance

Section 17A

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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:



- (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 is guilty of 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 declared Ramsar wetland.

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

- (2) A person is guilty of 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 declared Ramsar wetland and the person is reckless as to that fact.

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

- (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 be guilty of an offence against section 495.

- (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

**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

**Division 1** Requirements relating to matters of national environmental significance

Section 18

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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 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;
- (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:

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- (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.

*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:

**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

**Division 1** Requirements relating to matters of national environmental significance

Section 18A

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- (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 is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action results or will result in a significant impact on:
    - (i) a listed threatened species; or
    - (ii) a listed threatened ecological community.

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

- (2) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action is likely to have a significant impact on:
    - (i) a listed threatened species; or
    - (ii) a listed threatened ecological community;and the person is reckless as to that fact.

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

- (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 be guilty of an offence against section 495.

- (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 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

**Section 20**

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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).

**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 is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action results or will result in a significant impact on a listed migratory species.

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

- (2) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action is likely to have a significant impact on a listed migratory species and the person is reckless as to that fact.

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

- (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 be guilty of an offence against section 495.

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

**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

**Division 1** Requirements relating to matters of national environmental significance

**Section 21**

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- (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 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:

- (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;

Section 22

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- (c) establishing or significantly modifying a facility for storing radioactive waste products arising from reprocessing;
- (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, is guilty of 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, is guilty of 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 is guilty of 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 is guilty of an offence if:
- (a) the person takes a nuclear action; and

**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

**Division 1** Requirements relating to matters of national environmental significance

Section 22A

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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 is guilty of 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 is guilty of 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 be guilty of an offence against section 495.

- (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:

**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

**Division 1** Requirements relating to matters of national environmental significance

Section 23

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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

- (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.

Section 24

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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).

**24A Offences relating to marine areas**

*Actions in Commonwealth marine areas affecting the environment*

- (1) A person is guilty of 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.

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



*Actions in Commonwealth marine areas likely to affect the environment*

- (2) A person is guilty of 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 and the person is reckless as to that fact.

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

*Actions outside Commonwealth marine areas affecting those areas*

- (3) A person is guilty of 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 a Commonwealth marine area.

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

*Actions likely to affect environment in Commonwealth marine areas*

- (4) A person is guilty of 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 a Commonwealth marine area and the person is reckless as to that fact.

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

Section 24A

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

- (5) A person is guilty of 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.

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

- (6) A person is guilty of 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 and the person is reckless as to that fact.

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

*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 be guilty of an offence against section 495.

*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*.

**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

**Division 1** Requirements relating to matters of national environmental significance

Section 25

---

*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:
- (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 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 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.

**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

**Division 1** Requirements relating to matters of national environmental significance

**Section 25**

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- (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).
- (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.

## **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

**Chapter 2** Protecting the environment

**Part 3** Requirements for environmental approvals

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

Section 27

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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: 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 is guilty of 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.

- (2) A person is guilty of 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 and the person is reckless as to that fact.



Section 27A

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

- (3) A person is guilty of 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 on Commonwealth land.

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

- (4) A person is guilty of 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 on Commonwealth land 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) 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 be guilty of an offence against section 495.

- (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
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Section 28

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

**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: This 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

Section 28A

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- (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.
- (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.
- (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, in taking the actions to which the declaration relates, the agency must comply with the law of a State or Territory dealing with environmental protection.

## **Division 3—Review of extension of operation of this Part**

### **28A Identifying extra matters to be protected by this Part**

- (1) Every 5 years after the commencement of this Act, the Minister must cause a report to be prepared on whether this Part should be amended (or regulations made for the purposes of section 25) to

**Section 28A**

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prohibit or regulate additional actions that have, will have or are likely to have a significant impact on environmental matters that may properly be regarded as being of national or international significance.

- (2) The following must be taken into account in preparing the report:
  - (a) environmental matters that are properly regarded as being of national or international significance;
  - (b) the adequacy of existing legislation and administrative measures of the Commonwealth, the States and the Territories to prevent significant impacts on those matters;
  - (c) the principles of ecologically sustainable development;
  - (d) Australia's international obligations;
  - (e) the objects of this Act;
  - (f) the matters (if any) prescribed by the regulations for the purposes of this paragraph.
- (3) Before preparation of the report begins, the Minister must publish in accordance with the regulations (if any) an invitation for persons to comment, within a specified period, on the matters to be covered by the report.
- (4) Before preparation of the report is completed, the Minister must cause to be published in accordance with the regulations (if any):
  - (a) a draft of the report; and
  - (b) an invitation to comment on the draft within the period specified by the Minister.
- (5) The Minister must publish the report.
- (6) To avoid doubt, this section does not affect the operation of section 25.

## **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 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 plan that is a bilaterally accredited management plan 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) the bilaterally accredited management plan is in force under a law of the State or Territory identified in or under the bilateral agreement; and
  - (e) the action is taken in accordance with the bilaterally accredited management plan.

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 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.
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Section 30

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**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 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:

- (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 plan); and
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- (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) the bilaterally accredited management plan is in force under a law of the State or self-governing Territory identified in or under the bilateral agreement; and
- (g) the action is taken in accordance with the bilaterally accredited management plan.

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

## **Division 2—Actions covered by Ministerial declarations**

### **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 plan for the purposes of the declaration); and
- (b) the declaration is in operation when the action is taken; and
- (c) the accredited management plan is in force under a law of the Commonwealth identified in or under the declaration; and
- (d) the action is taken in accordance with the accredited management plan.

### **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 plan that is an accredited management plan 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 plan**?*

- (2) A management plan is an **accredited management plan** 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 the management plan:
- (a) is in force under a law of the Commonwealth identified in or under the declaration; and
  - (b) has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

*Accrediting management plan*

- (3) For the purposes of subsection (2), the Minister may accredit by written instrument a management plan for the purposes of a declaration. However, the Minister may do so only if the Minister is satisfied that:
- (a) the management plan and the law under which it is in force (or is to be in force) 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 plan:
    - (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 plan 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 plan.

Note: Subdivision C sets out more prerequisites for accrediting a plan.

**Section 33**

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*Tabling of management plan before accreditation*

- (4) The Minister must cause to be laid before each House of the Parliament a copy of a management plan that the Minister is considering accrediting for the purposes of subsection (2), together with a notice that the Minister proposes to accredit the plan for a declaration under this section.

*No accreditation before end of period for opposition*

- (5) The Minister must not accredit a management plan for the purposes of subsection (2) under a bilateral agreement:
- (a) before, or within 15 sitting days after, a copy of the management plan 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 plan is given in that House—within 15 sitting days of that House after the notice is given.

*No accreditation after accreditation opposed*

- (6) The Minister must not accredit the management plan if either House of the Parliament passes a resolution opposing accreditation of the management plan following a motion of which notice has been given within 15 sitting days after the management plan 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 plan if at the end of 15 sitting days after notice of a motion to oppose accreditation of the management plan that was given in a House of the Parliament within 15 sitting days after the management plan 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 plan 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:
    - (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 plan is taken for the purposes of subsections (5), (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.

<b>Matter protected by provisions of Part 3</b>		
<b>Item</b>	<b>Provision</b>	<b>Matter protected</b>
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
2	section 16	the ecological character of a declared Ramsar wetland

**Chapter 2** Protecting the environment

**Part 4** Cases in which environmental approvals are not needed

**Division 2** Actions covered by Ministerial declarations

Section 34

---

<b>Matter protected by provisions of Part 3</b>		
<b>Item</b>	<b>Provision</b>	<b>Matter protected</b>
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
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

<b>Matter protected by provisions of Part 3</b>		
<b>Item</b>	<b>Provision</b>	<b>Matter protected</b>
13	subsection 23(3)	the environment in the coastal waters (as defined in the <i>Fisheries Management Act 1991</i> ) in which the action is taken of the State or Territory
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 <i>Fisheries Management Act 1991</i> ) in which the action is taken of the State or Territory
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
17	section 28	the environment

Section 34A

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**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 plan 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 plan is not inconsistent with Australia's obligations under the World Heritage Convention; and
  - (b) the Minister is satisfied that the management plan will promote the management of the property in accordance with the Australian World 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:
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Section 34D

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- (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 plan under section 33 for the purposes of a declaration relating to a declared Ramsar wetland only if:
- (a) the Minister is satisfied that the management plan is not inconsistent with Australia's obligations under the Ramsar Convention; and
  - (b) the Minister is satisfied that the management plan 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

**Chapter 2** Protecting the environment

**Part 4** Cases in which environmental approvals are not needed

**Division 2** Actions covered by Ministerial declarations

**Section 34E**

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- (d) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 33 for the purposes of a declaration relating to a listed threatened species or a listed threatened ecological community only if:
  - (a) the Minister is satisfied that the management plan 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 plan 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 plan is not inconsistent with any recovery plan for the species or community or a threat abatement plan.

**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.
-



- (2) The Minister may accredit a management plan 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 plan 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 plan will promote the survival and/or enhance the conservation status of each species to which the declaration relates.

## **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) before the revocation of a declaration made under section 33, an action could be taken without approval under Part 9 because its taking had been approved by the Commonwealth or a Commonwealth agency in accordance with a management plan that was an accredited management plan for the purposes of the declaration; and
  - (b) the declaration is revoked;
- this Act continues to operate in relation to the action as if the declaration had not been revoked.

Section 36

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**36 Other rules about declarations**

*Minister must not give preference*

- (1) In making a declaration or accrediting a management plan 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.

*Publishing declarations*

- (2) The Minister must publish a declaration made under section 33, an instrument accrediting a management plan under section 33, or an instrument under section 35 revoking a declaration, in accordance with the regulations.

## **Division 4—Forestry operations in certain regions**

### **Subdivision A—Regions covered by regional forest agreements**

#### **38 Approval not needed for forestry operations permitted by regional forest agreements**

- (1) A person may undertake RFA forestry operations without approval under Part 9 for the purposes of a provision of Part 3 if they are undertaken in accordance with a regional forest agreement.

Note: This section does not apply to some forestry operations. See section 42.

- (2) In this Act:

*regional forest agreement* has the same meaning as in the *Regional Forest Agreements Act 1999*.

*RFA forestry operations* has the same meaning as in the *Regional Forest Agreements Act 1999*.

### **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.

Section 40

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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 Act:

*forestry operations* has the same meaning as in the *Regional Forest Agreements Act 1999*.

- (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 declare in writing that subsection (1) does not apply to an RFA region.
- (5) A declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (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:
- (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;
  - (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).
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**Chapter 2** Protecting the environment

**Part 4** Cases in which environmental approvals are not needed

**Division 4** Forestry operations in certain regions

Section 42

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*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 do not apply to forestry operations:

- (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) that are incidental to another action whose primary purpose does not relate to forestry.

## **Division 5—Actions in the Great Barrier Reef Marine Park**

### **43 Actions taken in accordance with permission**

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 the Great Barrier Reef Marine Park established by the *Great Barrier Reef Marine Park Act 1975*; and
- (b) the person is authorised to take the action in the place where he or she takes it, by any of the following instruments made or issued under that Act (including instruments made or issued under an instrument (including regulations) made or issued under that Act):
  - (i) a zoning plan;
  - (ii) a plan of management;
  - (iii) a permission;
  - (iv) an authority;
  - (v) an approval;
  - (vi) a permit.

## **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).



## **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,

Section 46

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the Minister must publish, in accordance with the regulations (if 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 plan that is a bilaterally accredited management plan for the purposes of the agreement do not require approval under Part 9 for the purposes of a specified provision of Part 3.

*What is a bilaterally accredited management plan?*

- (2) A management plan is a ***bilaterally accredited management plan*** 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 if and only if the management plan:
- (a) is in force under a law:

- (i) of the State or Territory that is party to the agreement;  
and
  - (ii) identified in or under the agreement; and
- (b) has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

*Accrediting management plan*

- (3) For the purposes of subsection (2), the Minister may accredit in writing a management plan 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 plan and the law of the State or Territory under which the management plan is in force (or is to be in force) 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 plan:
    - (i) have or will have; or
    - (ii) are likely to have;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 plan 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 plan.

Note: Subdivision B sets out more prerequisites for accrediting a plan.

*Tabling of management plan before accreditation*

- (4) The Minister must cause to be laid before each House of the Parliament a copy of a management plan that the Minister is considering accrediting for the purposes of subsection (2).

Section 46

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*No accreditation before end of period for disallowance*

- (5) The Minister must not accredit a management plan for the purposes of subsection (2) under a bilateral agreement:
- (a) before, or within 15 sitting days after, a copy of the plan 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 plan is given in that House—within 15 sitting days of that House after the notice is given.

*Disallowance motion passed*

- (6) The Minister must not accredit the management plan if either House of the Parliament passes a resolution disallowing the management plan following a motion of which notice has been given within 15 sitting days after the plan has been laid before the House.

*Disallowance motion not defeated in time*

- (7) The Minister must not accredit the management plan if at the end of 15 sitting days after notice of a motion to disallow the management plan that was given in a House of the Parliament within 15 sitting days after the management plan 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.

*Extended time after dissolution or prorogation*

- (8) If:
- (a) notice of a motion to disallow the management plan 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 plan is taken for the purposes of subsections (5), (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 plan 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) The declaration 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 a management plan that is a bilaterally accredited management plan for the purposes of the agreement; and
  - (b) not to approve the taking of actions that would be inconsistent with a management plan that is a bilaterally accredited management plan for the purposes of the agreement.

Section 47

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**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
  - (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
    - (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.
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Section 48A

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*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 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).

*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.

Section 49

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**49 Express provision needed to affect Commonwealth areas or actions**

- (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.
- (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 Uluru-Kata Tjuta 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
- (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 plan 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 plan is not inconsistent with Australia's obligations under the World Heritage Convention; and
  - (b) the Minister is satisfied that the plan will promote the management of the property in accordance with the Australian World 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
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Section 53

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- (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 plan under section 46 for the purposes of a bilateral agreement containing a provision relating to a declared Ramsar wetland only if:
- (a) the Minister is satisfied that the plan is not inconsistent with Australia's obligations under the Ramsar Convention; and
  - (b) the Minister is satisfied that the plan 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
  - (d) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 46 for the purposes of a bilateral agreement containing a provision
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relating to a listed threatened species or a listed threatened ecological community only if:

- (a) the Minister is satisfied that the plan 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 plan 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 plan is not inconsistent with any recovery plan for the species or community or a threat abatement plan.

#### **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.
- (2) The Minister may accredit a management plan under section 46 for the purposes of a bilateral agreement containing a provision relating to a listed migratory species only if:

Section 55

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- (a) the Minister is satisfied that the plan 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 plan 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 plan, 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.

**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.

## **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 heritage property did not require approval under Part 9 if approved by

**Chapter 3** Bilateral agreements

**Part 5** Bilateral agreements

**Division 3** Suspending and ending the effect of bilateral agreements

**Section 59**

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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 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).
- (4) Subsection (3) has effect subject to section 62.

Section 61

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- (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:
    - (a) given to the appropriate Minister of the State or Territory; and
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- (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 may 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 specified provisions of this Act is cancelled, either generally or in

Section 64

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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 plan that is a bilaterally accredited management plan for the purposes of the agreement, 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:
  - (a) 5 years after it is entered into; or
  - (b) at an earlier time when the agreement provides for it to cease to have effect for the purposes of this Act.

Note: The parties to a bilateral agreement may also agree to revoke it.

- (2) The Minister must:
  - (a) cause a review of the operation of a bilateral agreement to be carried out; and
  - (b) give a report of the review to the appropriate Minister of the State or Territory that is party to the agreement;before the agreement ceases to have effect as a result of this section.

Note: A bilateral agreement may also provide for review of its operation.

- (3) The Minister must publish the report 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

**Chapter 3** Bilateral agreements

**Part 5** Bilateral agreements

**Division 3** Suspending and ending the effect of bilateral agreements

**Section 65A**

---

taken without approval under Part 9 because its taking had already been approved in accordance with a management plan that was a bilaterally accredited management plan for the purposes of the agreement.



## **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

Section 66

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- (d) preliminary documentation provided by the proponent; or
- (e) a public environment report; or
- (f) an environmental impact statement; or
- (g) a public inquiry.

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.

## **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 prohibited by the provision. The provision is a *controlling provision* for the action.

#### **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.
- (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.

Section 69

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**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:
  - (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).

## **71 Commonwealth agency may refer proposal to Minister**

- (1) A Commonwealth agency (except the Minister) 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.

## **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
- (b) invite the person to give the Minister relevant information about whether the action is a controlled action, within 10 business days.

## **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

Section 74

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- (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 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:
  - (a) inform the appropriate Minister of the State or Territory; and
  - (b) invite that Minister to give the Environment Minister comments within 10 business days on whether the proposed action is a controlled action;

if 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).

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:
  - (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.

*Section does not apply if proponent says action is controlled action*

- (4) This section does not apply in relation to a referral of a proposal to take an action by the person proposing to take the action if the person states in the referral that the person thinks the action is a controlled action.

## **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.

*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 (if any) 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;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.

Section 75

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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 and designation:
- (a) within 20 business days of the referral; or
  - (b) if the person proposing to take the action referred the proposal and stated in the referral that the person thought the action was a controlled action—within 10 business days of the referral.

Note: Section 156 sets out rules about time limits.

*Time does not run while further information being sought*

- (6) If the Minister has requested more information under section 76 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.

*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 decision**

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.

### **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.

Section 77

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*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.

*Identifying manner of action so it is not caught by provision of Part 3*

- (3) 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 (whether or not in accordance with an accredited management plan for the purposes of a declaration under section 33 or a bilaterally accredited management plan for the purposes of a bilateral agreement), the notice must set out the component decision, identifying the provision and the manner.

Note: The Minister may decide 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.

*Reasons for decision*

- (4) The Minister must give reasons for the decision to a person who:
- (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.

*Reasons need not be given in some cases*

- (5) Subsection (4) does not apply in relation to a decision whether or not an action is a controlled action if the person proposing to take the action:
- (a) referred the proposal to the Minister; and

- (b) stated in the referral that the person thought the action was a controlled action.

## 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) if 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 in the notice under subsection 77(3)—the Minister is satisfied that the action is not being, or will not be, taken in the manner identified; or
  - (c) if the first decision was that the action was not a controlled action because of a provision of a bilateral agreement or a declaration under section 33 and a management plan that is a bilaterally accredited management plan for the purposes of the agreement or an accredited management plan for the purposes of the declaration:
    - (i) the provision of the agreement or declaration no longer operates in relation to the action; or

Section 78

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- (ii) the management plan is no longer in force under a law of the Commonwealth, a State or a self-governing Territory identified in or under the agreement or declaration; or
- (d) the Minister is requested under section 79 to reconsider the 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.

*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
  - (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.

## **79 Reconsideration of decision on request by a State or Territory**

- (1) This section applies if:
- (a) the Minister (the ***Environment Minister***) makes a decision 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 self-governing Territory; and

**Section 79**

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- (b) the person proposing to take the action did not refer the proposal to the Minister with a statement that the person thought the action was a controlled action.

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 5 business days of being notified of the decision, a Minister of the State or Territory may request the Environment Minister to reconsider the Environment Minister's decisions made under subsection 75(1).

Note: Subsection 75(1) provides for decisions about whether the action is a controlled action and what the controlling provisions for the action are.

- (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
    - (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.

## **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;
- (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).

Section 81

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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 or 2 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.



*Relationship between subsections (1) and (2)*

- (3) Subsection (1) has effect despite subsection (2).

**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.

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 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

**Section 84**

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(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:
- (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, 34C, 34D and 34E 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.

*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.

## **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;
- (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**

#### **86 Designated proponent must provide preliminary information for assessment**

The designated proponent of an action, or a person proposing to take an action, must give the Minister in the prescribed way the prescribed information relating to the action.

Note: The Minister must not decide on an approach for assessment until he or she receives information under this section. See subsection 88(1).

## **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 the action:
  - (a) assessment by an accredited assessment process;
  - (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.

### *Minister must consult before making decision*

- (2) If:
  - (a) the action 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 (about matters of national environmental significance);the Minister must invite the appropriate Minister of the State or Territory to provide information relevant to deciding which approach is appropriate, before deciding on the approach to be used for assessment of the relevant impacts of the action.

Note: Subsection (2) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

### *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 or under section 86; 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

Section 87

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- 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 subsection (2); 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 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 whichever of the following days is later (or either of them if they are the same):
  - (a) the day the Minister decides under Division 2 of Part 7 that the action is a controlled action;
  - (b) the day the Minister is given information relating to the action as required by section 86.

Note: Section 156 sets out rules about time limits.

### *Extended time if difference of opinion with State or Territory*

- (2) However, subsection (1) has effect as if it referred to 30 business days (instead of 20 business days) if the Minister believes that information provided in response to an invitation under subsection 87(2) cannot be considered adequately to make the decision in the time allowed by subsection (1) apart from this subsection.

### *Subsection (2) does not require decision to be delayed*

- (3) To avoid doubt, subsection (2) does not require the Minister to delay making a decision:
  - (a) until information is received in response to an invitation under subsection 87(2); or
  - (b) until 20 business days after the Minister is given information relating to the action under section 86.

### *Time does not run while further information sought*

- (4) If the Minister has requested more information under section 89 for the purposes of deciding on the approach to be used for assessment of the relevant impacts of the action, a day is not to be counted as a business day for the purposes of subsection (1) if it is:

Section 89

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- (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**

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.

**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.

## **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 designated proponent of 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.

**Chapter 4** Environmental assessments and approvals

**Part 8** Assessing impacts of controlled actions

**Division 3** Decision on assessment approach

Section 91

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- (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.

## **Division 4—Assessment on preliminary documentation**

### **92 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 assessment on preliminary documentation under this Division.

### **93 Public comment on information included in referral**

- (1) Within 10 business days of the decision, the Minister must give the designated proponent a written direction:
  - (a) to publish within 10 business days in accordance with the regulations:
    - (i) specified information included in the referral to the Minister of the proposal to take the action; and
    - (ii) specified information that was given to the Minister under section 86; and
    - (iii) specified information relating to the action that was given to the Minister after the referral but before the Minister made the decision under section 87; and
    - (iv) an invitation for anyone to give the designated proponent comments relating to the information or the action within a period of the length specified in the direction; and
  - (b) to give to the Minister a copy and summary of any comments received within the period specified in the invitation.
- (2) The designated proponent must comply with the direction.

### **94 Revised documentation**

- (1) After the period for comment, the designated proponent must give the Minister:

Section 95

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- (a) a document that sets out the information provided to the Minister previously in relation to the action, with any changes or additions needed to take account of any comments received by the designated proponent; or
  - (b) if the designated proponent did not receive any comments—a written statement to that effect.
- (2) The Minister may refuse to accept a document referred to in paragraph (1)(a) if he or she believes on reasonable grounds that it is inadequate for the purposes of making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action.

**95 Assessment report**

*Preparation*

- (1) The Secretary must prepare, and give to the Minister, a report relating to the action within 20 business days after:
- (b) if the designated proponent has received comments in response to an invitation under section 93—the day the Minister accepted from the designated proponent the document described in paragraph 94(1)(a); or
  - (c) if the designated proponent has not received any comments in response to an invitation under section 93—the day the designated proponent gave the Minister the statement to that effect under paragraph 94(1)(b).

*Publication*

- (2) The Secretary must provide to a person who asks for the report a copy of it (either free or at a reasonable charge determined by the Secretary).

*Discretion not to publish*

- (3) However, the Secretary may refuse to provide a copy of so much of the report as:

- (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of the security of the Commonwealth or its providing advice to the Minister; or
- (b) the Secretary is satisfied is commercial-in-confidence.

*Commercial-in-confidence*

- (4) 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
  - (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.

## **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.

### **97 Minister must prepare guidelines for draft public environment report**

- (1) The Minister must prepare written guidelines for the content of a draft report about the relevant impacts of the action. The Minister must do so:
  - (a) within 20 business days of the decision that the relevant impacts of the action must be assessed by a public environment report under this Division; or
  - (b) if the Minister invites a person to comment on a draft of the guidelines within a period specified by the Minister—within 20 business days after the end of that period (or the latest of those periods, if there is more than one).
- (2) In preparing the 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) The 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.

- (4) Division 2 does not limit:
  - (a) subsection (3); or
  - (b) section 98 so far as it relates to guidelines prepared in reliance on that subsection.
- (5) In preparing the guidelines, the Minister may:
  - (a) invite anyone to comment on a draft of the guidelines within a period specified by the Minister; and
  - (b) take account of the comments received (if any).

## **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 report about the relevant impacts of the action (and any other impacts mentioned under subsection 97(3) in the guidelines for the content of the draft report); and

Section 99

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- (b) obtain the Minister's approval for publication of the draft report; and
- (c) publish in accordance with the regulations:
  - (i) the draft report; and
  - (ii) an invitation for anyone to give the designated proponent comments relating to the draft report or the action within the period specified in the invitation; and
- (d) give the Minister a copy and summary of the comments (if any) received 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 adequately addresses the guidelines for the content of the draft report.

*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**

*Designated proponent must finalise report*

- (1) After the end of the period specified in the invitation to comment under section 98, the designated proponent must finalise the draft report, taking account of the comments received (if any), and give the finalised report to the Minister.

*Form of finalised report*

- (2) The designated proponent may give the finalised report to the Minister in the form of:
  - (a) a revised version of the draft report; or
  - (b) the draft report and a supplement to the draft report.



*Refusal to accept finalised report*

- (3) The Minister may refuse to accept the finalised report if he or she is satisfied on reasonable grounds that the finalised report is inadequate for the purposes of making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action.

*Publication of finalised report*

- (4) After the Minister has accepted the finalised report, the designated proponent must publish it in accordance with the regulations.

## **100 Assessment report**

*Preparation*

- (1) The Secretary must prepare, and give to the Minister, a report relating to the action within 20 business days after the day on which the Minister accepted the finalised report from the designated proponent.

*Publication*

- (2) The Secretary must provide to a person who asks for the report a copy of it (either free or at a reasonable charge determined by the Secretary).

*Discretion not to publish*

- (3) However, the Secretary may refuse to provide a copy of so much of the report as:
  - (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of the security of the Commonwealth or its providing advice to the Minister; or
  - (b) the Secretary is satisfied is commercial-in-confidence.

Section 100

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*Commercial-in-confidence*

- (4) 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
  - (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.

## **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.

### **102 Minister must prepare guidelines for draft environmental impact statement**

- (1) The Minister must prepare written guidelines for the content of a draft statement about the action and its relevant impacts. The Minister must do so:
  - (a) within 20 business days of the decision that the relevant impacts of the decision must be assessed by an environmental impact statement under this Division; or
  - (b) if the Minister invites a person to comment on a draft of the guidelines within a period specified by the Minister—within 20 business days after the end of that period (or the latest of those periods, if there is more than one).
- (2) In preparing the 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) The 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

Section 103

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- (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.

- (4) Division 2 does not limit:
  - (a) subsection (3); or
  - (b) section 103 so far as it relates to guidelines prepared in reliance on that subsection.
- (5) In preparing the guidelines, the Minister may:
  - (a) invite anyone to comment on a draft of the guidelines within a period specified by the Minister; and
  - (b) take account of the comments (if any) received.

**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 statement about the relevant impacts of the action (and any other impacts mentioned under subsection 102(3) in the guidelines for the content of the draft statement); 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 relating to the draft statement or the action within the period specified in the invitation; and
- (d) give the Minister a copy and summary of the comments (if any) received 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 adequately addresses the guidelines for the content of the draft statement.

*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 draft environmental impact statement**

*Designated proponent must finalise statement*

- (1) After the period specified in the invitation to comment under section 103, the designated proponent must:
  - (a) finalise the draft statement, taking account of the comments (if any) received in response to the invitation; and
  - (b) give the finalised statement to the Minister.

Section 105

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*Form of finalised statement*

- (2) The designated proponent may give the finalised statement to the Minister in the form of:
  - (a) a revised version of the draft statement; or
  - (b) the draft statement and a supplement to the draft statement.

*Refusal to accept finalised statement*

- (3) The Minister may refuse to accept the finalised statement if he or she is satisfied on reasonable grounds that it is inadequate for the purposes of making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action.

*Publication of finalised statement*

- (4) After the Minister has accepted the finalised statement, the designated proponent must publish it in accordance with the regulations.

**105 Assessment report**

*Preparation*

- (1) The Secretary must prepare, and give to the Minister, a report relating to the action within 30 business days after the day on which the Minister accepted from the designated proponent the finalised statement.

*Publication*

- (2) The Secretary must provide to a person who asks for the report a copy of it (either free or at a reasonable charge determined by the Secretary).

*Discretion not to publish*

- (3) However, the Secretary may refuse to provide a copy of so much of the report as:
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- (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of the security of the Commonwealth or its providing advice to the Minister; or
- (b) the Secretary is satisfied is commercial-in-confidence.

*Commercial-in-confidence*

- (4) 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
  - (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.

## 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.



Section 108

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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) may specify other certain or likely impacts of the action.
- (4) However, the Minister may specify other certain or likely impacts of the action only 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.
- (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
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Section 109

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- (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:
  - (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

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Section 111

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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
  - (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) is guilty of an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

Section 112

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*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
  - (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) is guilty of 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.

### **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.

Section 114

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### 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*) is guilty of an offence punishable on conviction by imprisonment for not more than 6 months if:
  - (a) the offender obstructs or hinders another person; and
  - (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 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

Section 117

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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, facsimile 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 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, facsimile 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 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.

Section 118

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**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.

**119 Contempt**

- (1) A person is guilty of 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 is guilty of 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
  - (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.

Section 120

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*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) is guilty of 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.

*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.

### **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.

Section 124

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### 124 Remuneration

- (1) A commissioner who is not appointed or employed under the *Public Service Act 1922* 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*.

### 125 Leave of absence

- (1) Subject to section 87E of the *Public Service Act 1922*, 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.
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Section 128

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- (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
  - (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.

Section 129

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- (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.

**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.



## **Part 9—Approval of actions**

### **Division 1—Decisions on approval and conditions**

#### **Subdivision A—General**

#### **130 Timing of decision on approval**

##### *Basic rule*

- (1) Within whichever of the following periods is relevant, the Minister must decide for the purposes of each controlling provision whether or not to approve the taking of a controlled action:
  - (a) 30 business days, or such longer period as the Minister specifies in writing, if the action is the subject of an assessment report;
  - (b) 40 business days, or such longer period as the Minister specifies in writing, if a commission has conducted an inquiry relating to the action.

##### *Start of period—basic rule*

- (1A) The relevant period starts on the first business day after the day the Minister receives the assessment report or the report of the commission (as appropriate).

##### *Start of period—certain actions in States and Territories*

- (1B) However, if the action is to be taken in a State or self-governing Territory and is covered by subsection (1C), the relevant period starts on the later of the following days:
  - (a) the day worked out under subsection (1A);
  - (b) the first business day after the day the Minister receives from the State or self-governing Territory a notice:
    - (i) stating that the certain and likely impacts of the action on things other than matters protected by the controlling

**Section 130**

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provisions for the action have been assessed to the greatest extent practicable; and

(ii) explaining how they have been assessed.

Note 1: This means that the Minister cannot grant an approval until he or she has received notice from a State or Territory as described in paragraph (1B)(b).

Note 2: Subsection (1B) also applies in relation to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

*Actions to which subsection (1B) applies*

(1C) Subsection (1B) applies to an action only if it:

- (a) 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
- (b) 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.

*Start of period—actions in 2 or more jurisdictions*

(1D) If the action is to be taken in more than one State or self-governing Territory, the relevant period does not start until after the last day on which the Minister receives from one of those States or Territories a notice described in paragraph (1B)(b).

*Exception for certain actions*

(1E) Subsection (1B) does not apply if:

- (a) the action:
  - (i) is a nuclear action; or
  - (ii) is to be taken in a Commonwealth marine area; or
  - (iii) is to be taken 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.

*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); or
  - (d) subsection 95(1) (about assessments on preliminary documentation); or
  - (e) subsection 100(1) (about public environment reports); or
  - (f) subsection 105(1) (about environmental impact statements).

*Time may be extended only to consider other Ministers' comments*

- (3) The Minister may specify a longer period for the purposes of paragraph (1)(a) or (b) only if:
- (a) the Minister has received comments about a proposed decision from another Minister in accordance with an invitation under section 131; and
  - (b) the Minister is satisfied that it would not be practicable to consider them adequately and make a decision within the period that would apply if the longer period were not specified.

*Notice of extension of time*

- (4) If the Minister specifies a longer period for the purposes of paragraph (1)(a) or (b), 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.

Section 131

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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 (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.

**131 Inviting comments from other Ministers before decision**

- (1) Before the Minister (the *Environment Minister*) decides whether or not to approve 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.

**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:

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- (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.

### **133 Grant of approval**

#### *Approval*

- (1) After receiving an assessment report 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.

#### *Content of approval*

- (2) An approval must:
  - (a) be in writing; and
  - (b) specify the action that may be taken; and
  - (c) name the person who may take the action; 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 any conditions attached to the approval.

#### *Notice of approval*

- (3) The Minister must:
  - (a) give a copy of the approval to the person; 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:
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Section 133

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- (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of commercial confidence; 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.

*Circumstances in which approval must not be granted*

- (5) The Minister must not approve for the purposes of a provision of Part 3 the taking in a State or self-governing Territory of an action that is covered by subsection (6) before the Minister receives from the State or Territory a notice described in paragraph 130(1B)(b). This does not apply if:

- (a) the action:
  - (i) is a nuclear action; or
  - (ii) is to be taken in a Commonwealth marine area; or
  - (iii) is to be taken 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.

Note: Subsection (5) also applies in relation to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

*Actions to which subsection (5) applies*

- (6) Subsection (5) applies to an action only if it:
  - (a) 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
  - (b) 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.

*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.

### **134 Attaching conditions to approval**

*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; 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).

*Other conditions that may be attached to approval*

- (3) The conditions that may be attached to an approval include:
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Section 134

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- (a) conditions relating to any security to be given by the person 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 the 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 person to insure against any specified liability of the person to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and
- (c) conditions requiring the 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 the person whose taking of the action is approved; and
- (e) conditions requiring the preparation, submission for approval by the Minister, and implementation of a plan for managing the impacts of the approved action on a matter protected by a provision of Part 3 for which the approval has effect such as a plan for conserving habitat of a species or ecological community; and
- (f) conditions requiring specified environmental monitoring or testing to be carried out; and
- (g) conditions requiring compliance with a specified industry standard or code of practice.

This subsection does not limit the kinds of conditions that may be attached to an approval.



*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 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 the person taking the action to achieve the object of the condition.

*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.

**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

Section 136

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meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

**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 relating to the action; and
  - (c) if the action was assessed under Division 5 or 6 of Part 8 (which deal with public environment reports and environmental impact statements)—the report or statement about the action finalised by the designated proponent; 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 by another Minister in accordance with an invitation under section 131.

*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 may consider whether the person is a suitable person to be granted an approval, having regard to the person's history in relation to environmental matters.

*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 Subdivision 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 Australia's obligations under the World Heritage Convention.

### **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**

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

Section 140

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- (iii) CITES; or
- (b) a recovery plan or threat abatement plan.

**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**

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.

## **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.
- (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 is guilty of 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).

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 is guilty of 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

**Chapter 4** Environmental assessments and approvals

**Part 9** Approval of actions

**Division 2** Requirement to comply with conditions

Section 142A

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- (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 (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 be guilty of an offence against section 495.

## **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 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
  - (c) the person whose taking of the action was approved agrees to the proposed revocation, variation or addition and the Minister is satisfied that any conditions attached to the approval after the proposed revocation, variation or addition are necessary or convenient for:
    - (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).
- (2) The Minister may, by written instrument, revoke any condition 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.

Section 144

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- (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 the person's history in relation to environmental matters.
- (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:
  - (a) give a copy of it to the person to whose action the approval relates; and
  - (b) publish the instrument in accordance with the regulations.

Note: If the person is not satisfied with changed conditions attached to the approval of the person'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 an exempt document under the *Freedom of Information Act 1982* on the grounds of commercial confidence; 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.

### **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.
- (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 the person's history in relation to environmental matters.
- (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 person to whose action the approval relates; and
  - (b) publish the instrument in accordance with the regulations.

### **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

Section 145A

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- (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.
- (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 the person's history in relation to environmental matters.
- (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 to whose action the approval related; 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
  - (b) revoked an approval under this Part of the taking of an action by a person.

Section 145A

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*Requesting reinstatement of approval*

- (2) Within 2 months after receiving a copy of the instrument under this Division, the person 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 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 to provide specified information relevant to making the decision.

*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

**Chapter 4** Environmental assessments and approvals

**Part 9** Approval of actions

**Division 3** Variation of conditions and suspension and revocation of approvals

Section 145A

---

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 written notice of the Minister's decision; and
  - (b) publish notice of the decision in accordance with the regulations.

## **Division 4—Transfer of approvals**

### **145B Transfer with Minister's consent**

#### *Transfer by written agreement*

- (1) A person (the *transferor*) whose taking of an action has been approved 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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**Chapter 4** Environmental assessments and approvals

**Division 4** Transfer of approvals

**Division 3** Variation of conditions and suspension and revocation of approvals

Section 145B

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- (a) whether the transferee would be a suitable person to be granted the approval, having regard to the transferee's history in relation to environmental matters; 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.

## **Part 10—Strategic assessments**

### **Division 1—Strategic assessments generally**

#### **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 relevant impacts of actions under the policy, plan or program that are controlled actions or would be apart from Division 1 or 2 of Part 4.

(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.

(2) The agreement must provide for:

- (aa) the preparation of draft terms of reference for a report on the impacts to which the agreement relates; and

Section 146

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- (ab) 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; and
- (ac) 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; and
- (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.

Note 1: If the relevant 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 plan in force under a law, he or she may declare under section 33, or make a bilateral agreement declaring, that actions approved in accordance with the management plan 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).

## **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).

## **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 relevant impacts of actions under the plan; 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 relevant impacts of actions under the plan; 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 relevant impacts of actions permitted under the Authority's policy for managing the fishery; and
- (b) consider any recommendations made by the Minister under the agreement.

Section 150

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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 relevant impacts of actions permitted under the Authority's policies for managing at least  $\frac{2}{3}$  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 relevant impacts of actions 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.

### **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 relevant impacts of the actions 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(1).

### **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
    - (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);
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Section 153

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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, unless there is a plan of management in force for the fishery under the *Fisheries Management Act 1991*.

*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 the Minister makes an agreement under section 146 as required by this Division and endorses under the agreement:
- (a) a plan of management under the *Fisheries Management Act 1991* for a fishery; or
  - (b) 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
  - (c) a plan of management under the *Torres Strait Fisheries Act 1984* for a fishery; or
  - (d) policies for managing fishing under the *Torres Strait Fisheries Act 1984*.

- (2) The Minister must:
- (a) make a declaration under section 33 that actions approved in accordance with the accredited management plan consisting of the endorsed plan or policies 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); and
  - (b) accredit under section 33 the endorsed plan or policies as an accredited management plan for the purposes of the declaration.

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 management plan. See section 32.

### **154 This Division does not limit Division 1**

This Division does not limit Division 1.

## **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.



### **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.

**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*.

## **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. 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.

## **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;
- (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.

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.

### *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, will have or are likely to have a significant impact on the environment; and

Section 160

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- (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:
    - (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 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;if the Minister thinks the agency or employee is required by section 160 to obtain and consider the Minister's advice before giving the authorisation.

Section 162

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*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.

**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 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 days of receiving:
- (a) a report mentioned in subsection 84(3) or section 95, 100 or 105 (as applied by section 162); or
  - (b) a report of an inquiry under Division 7 of Part 8 (as applied by section 162) relating to the action.

#### **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 B—Assessment of applications for permits relating to whales, dolphins and porpoises**

#### **165 Assessment of applications for permits relating to whales, dolphins and porpoises**

##### *Overview*

- (1) This section provides for the assessment of an action for which a person is applying for a permit under Division 3 of Part 13 (about whales and other cetaceans).

**Chapter 4** Environmental assessments and approvals

**Part 11** Miscellaneous rules about assessments and approvals

**Division 4** Application of Chapter to actions that are not controlled actions

Section 166

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*Application of Part 8*

- (2) 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 by the permit as if:
- (a) the application for the permit 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 application was made; and
  - (c) the person applying for the permit 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 action has, will have or is likely to have on cetaceans; 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 making an informed decision about whether or not to issue the permit.

*Assessment report must be considered in decision on permit*

- (5) The Minister must consider the assessment report relating to the action when deciding whether to grant the permit for the action.

**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
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- (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.
  - (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:

Section 168

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- (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) either specify that one of Divisions 4, 5, 6 and 7 of Part 8 is to apply in relation to the action or specify that Division 1 of Part 10 is to apply in relation to the action; and
  - (b) if it specifies that one of Divisions 4, 5 and 6 of Part 8 is to apply—specify the person who is taken to be the designated proponent of the action for the purposes of that Division.

*Agreement applying Division 4 of Part 8*

- (2) An agreement that specifies that Division 4 of Part 8 (about assessment on preliminary documentation) is to apply in relation to an action may deal with how the Minister will exercise his or her power under section 94 to refuse to accept a document.

*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 guidelines for the content of a draft report; or
  - (b) under section 98 to approve publication of a draft report or specify a period for comment; or
  - (c) under section 99 to refuse a finalised report.

*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 guidelines for the content of a draft statement; or
  - (b) under section 103 to approve publication of a draft statement or specify a period for comment; or
  - (c) under section 104 to refuse a finalised statement.

*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:
- (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 Division 1 of Part 10 is to apply may:
- (a) be in the same document as an agreement mentioned in that Division; or
  - (b) specify the manner in which an agreement the Minister makes under that Division is to provide for matters that that Division requires that agreement to provide for.

Section 169

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**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
  - (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 section 93*

- (3) Also, if the agreement states that Division 4 of Part 8 is to apply in relation to the assessment of an action, that Division applies in

relation to the action as if subparagraphs 93(1)(a)(i), (ii) and (iii) 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 Division 1 of Part 10**

If an agreement to apply this Subdivision states that Division 1 of Part 10 is to apply:

- (a) that Division 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
  - (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.

## **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;
- (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;
- (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) the availability of each assessment report given to the Minister under Division 4, 5 or 6 of Part 8 in the immediately preceding week;



- (j) any other matter prescribed by the regulations.

## Chapter 5—Conservation of biodiversity

### 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 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 must prepare inventories that identify, and state the abundance of, the listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species on Commonwealth land.
- (2) Commonwealth land must be covered by an inventory:
  - (a) within 5 years after the commencement of this Act; or
  - (b) within 5 years after the land became Commonwealth land; whichever is later.
- (3) A Commonwealth agency that has an interest in Commonwealth land must provide all reasonable assistance in connection with the preparation under this section of an inventory that is to cover the land.

### **173 Surveys of cetaceans, listed threatened species etc. in Commonwealth marine areas**

- (1) The Minister must prepare surveys that identify, and state the extent of the range of:
  - (a) cetaceans present in Commonwealth marine areas; and
  - (b) the listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species in Commonwealth marine areas.
- (2) A Commonwealth marine area must be covered by a survey:
  - (a) within 10 years after the commencement of this Act; or

Section 174

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- (b) within 10 years after the area became a Commonwealth marine area;  
whichever is later.
- (3) A Commonwealth agency that has an interest in a Commonwealth marine area is to provide all reasonable assistance in connection with the preparation under this section of a survey that is to cover 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.

**175 Obligations under this Act unaffected by lack of inventories or surveys**

Obligations imposed by this Act are not affected, in their application in relation to Commonwealth land or Commonwealth marine areas, by any lack of inventories or surveys for such land or areas.

## **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;
  - (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.
- (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.

Section 177

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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.

## **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 instrument published in the *Gazette*, 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.

Section 179

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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.



- (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, 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 within a period of 5 years.

### **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.
- (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 instrument published in the *Gazette*, 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

Section 182

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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) An instrument (other than an instrument establishing the list mentioned in subsection (3)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**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 instrument published in the *Gazette*, 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**

- (1) Subject to this Subdivision, the Minister may, by instrument published in the *Gazette*, amend a list referred to in section 178, 181 or 183 by:
  - (a) including items in the list; 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; or
  - (d) correcting an inaccuracy or updating the name of a listed threatened species or listed threatened ecological community.
- (2) An instrument (other than an instrument mentioned in paragraph (1)(d)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) Despite section 48 of the *Acts Interpretation Act 1901* as it applies in relation to an instrument because of section 46A of that Act, amendments of the kind mentioned in paragraphs (1)(b) and (c) take effect on the first day on which they are no longer liable to be disallowed, or to be taken to have been disallowed, under section 48 of that Act as it so applies.

**Section 185**

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- (4) When an instrument is laid before each House of the Parliament in accordance with section 48 of the *Acts Interpretation Act 1901*, 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 a list by the instrument—why the item was so included; or
  - (b) in the case of an item that has been deleted from a list by the instrument—why the item was so deleted; or
  - (c) in the case of an item that has been transferred by the instrument from one category in the list referred to in section 178 or 181 to another category in that list—why the item has been so transferred.
- (5) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).

**185 Maintaining the lists in up-to-date condition**

- (1) The Minister must take all reasonably practical steps to amend as necessary:
- (a) the list referred to in section 178 so that it contains in each category all native species that are eligible to be, or under subsection 186(3), (4) or (5) can be, included in that category; and
  - (b) the list referred to in section 181 so that it contains in each category all ecological communities that are eligible to be included in that category.
- (2) The Minister must decide whether to amend the list referred to in section 181 to include an ecological community that is described as critically endangered, endangered or vulnerable in a list that is:
- (a) kept by:
    - (i) a State; or
    - (ii) a self-governing Territory; or
    - (iii) the body known as the Australian and New Zealand Environment and Conservation Council; and

- (b) identified by the Minister by a notice published in the *Gazette*.

### **186 Amending list of threatened native species**

- (1) Subject to subsections (3), (4) and (5), the Minister must not:
- (a) include (whether as a result of a transfer or otherwise) a native species in a particular category; or
  - (b) delete (whether as a result of a transfer or otherwise) a native species from a particular category;
- unless satisfied that the native species is eligible, or is no longer eligible, as the case requires, to be included in that category.
- (2) In deciding whether to include a native species in, or delete a native species from, a particular category (whether as a result of a transfer or otherwise), the Minister must not consider any matter that does not relate to the survival of the native species concerned.
- (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
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Section 187

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- (c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as endangered.
- (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**

- (1) The Minister must not:
  - (a) include (whether as a result of a transfer or otherwise) an ecological community in a particular category of the list; or
  - (b) delete (whether as a result of a transfer or otherwise) an ecological community from a particular category;unless satisfied that the ecological community is eligible, or is no longer eligible, as the case requires, to be included in that category.
- (2) In deciding whether to include an ecological community in, or delete an ecological community from, a particular category (whether as a result of a transfer or otherwise), the Minister must not consider any matter that does not relate to the survival of the ecological community concerned.

**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.

#### **189 Minister must consider advice from Scientific Committee**

- (1) Subject to section 192, in deciding whether to amend:
  - (a) the list referred to in section 178 or 181; or
  - (b) the list referred to in section 183;the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the proposed amendment.
- (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 of a list referred to in paragraph (1)(a), the Scientific Committee must not consider any matter that does not relate to the survival of the native species or ecological community concerned.
- (4) If a native species, ecological community or threatening process has been nominated under section 191 to be listed, the Scientific Committee must give its advice to the Minister within 12 months,

Section 190

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or such longer period as the Minister specifies, after the Scientific Committee receives the nomination from the Minister under that section.

- (5) The Minister must:
- (a) decide whether to amend the list; and
  - (b) if the Minister decides to amend the list—cause the necessary instrument to be published in the *Gazette*;
- within 90 days after receiving the Scientific Committee’s advice on the amendment.
- (6) 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) if an instrument is published in the *Gazette* relating to an amendment of a list to which the advice relates—occurred after the publication.

**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.

**191 Nomination of threatened species etc.**

- (1) A person may, in accordance with the regulations (if any), nominate to the Minister:



Section 191

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- (a) a native species to be included in a particular category of the list referred to in section 178; or
  - (b) an ecological community to be included in a particular category of the list referred to in section 181; or
  - (c) a threatening process to be included in the list referred to in section 183.
- (2) The Minister must forward a nomination to the Scientific Committee within 10 business days of receiving the nomination. However, the Minister need not forward a nomination that the Minister rejects under subsection (6).
- (3) If the Minister decides that a nominated native species or ecological community is not eligible to be included in the nominated category, the Minister must, in accordance with the regulations (if any):
- (a) advise the person who made the nomination of the Minister's decision; and
  - (b) give to that person a statement of reasons why the native species or ecological community is not eligible to be included in the nominated category.
- (4) If the Minister decides that a threatening process is not eligible to be listed, the Minister must, in accordance with the regulations (if any):
- (a) advise the person who made the nomination of the Minister's decision; and
  - (b) give to that person a statement of reasons why the threatening process is not eligible to be listed.
- (5) The Minister may, at any time, request a person who has made a nomination to provide additional information about the subject of the nomination within such period as the Minister specifies.
- (6) The Minister may reject a nomination if satisfied that it is vexatious, frivolous or not made in good faith.

Section 192

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**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 instrument published in the *Gazette*, 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.
- (3) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).

**194 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.

## **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.

### **196 Recklessly killing or injuring member of listed threatened species or community**

- (1) A person is guilty of 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.

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)(d).
- 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.

### **196A Strict liability for killing or injuring member of listed threatened species or community**

- (1) A person is guilty of 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

Section 196B

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- (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.

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 paragraphs (1)(a), (b), (c) and (d).

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.

**196B Recklessly taking etc. member of listed threatened species or community**

- (1) A person is guilty of 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.

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.

**196C Strict liability for taking etc. member of listed threatened species or community**

- (1) A person is guilty of 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.

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 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.

**196D Trading etc. member of listed threatened species or community taken in Commonwealth area**

- (1) A person is guilty of 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.

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*.

Section 196E

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- (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.

**196E Strict liability for trading etc. member of listed threatened species or community taken in Commonwealth area**

- (1) A person is guilty of 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.

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 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.

**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 a subsection of section 18 or of section 18A; 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 section 18 or 18A; and
  - (ii) is taken in accordance with a management plan that is an accredited management plan for the purposes of the declaration; 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
- (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.

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

### **198 Operation of sections 18 and 18A not affected**

To avoid doubt, sections 196, 196A, 196B, 196C, 196D, 196E and 197 do not affect the operation of section 18 or 18A.

Section 199

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**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;
  - (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
  - (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 to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.
- (5) A person is guilty of 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 notice of the application to be given to each person and body registered under section 266A (about registration for consultation on permit applications).
- (4) The notice must:
  - (a) state that an application for a permit has been made; and
  - (b) set out details of the application; and
  - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
  - (d) specify:
    - (i) an address for lodgment of submissions; and
    - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

Section 201

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**201 Minister may issue permits**

- (1) Subject to subsection (3), 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
  - (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.
- (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 all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 200.

## **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.

## **203 Contravening conditions of a permit**

The holder of a permit is guilty of 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:
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**Section 205**

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- (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.

**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**

An application may be made to the Administrative Appeals 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
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- (d) to transfer or refuse to transfer a permit; or
- (e) to suspend or cancel a permit.

## **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.

## **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.
- (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).
- (4) Habitat listed in the register in relation to a species or ecological community is *critical habitat* for the species or ecological community.

### **207B Offence of knowingly damaging critical habitat**

- (1) A person is guilty of 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

**Section 207C**

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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.

(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**

### **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.

## Division 2—Migratory species

### Subdivision A—Listing

#### 209 Listed migratory species

- (1) The Minister must, by instrument published in the *Gazette*:
  - (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 species from time to time included in appendices to the Bonn Convention and for which Australia is a Range State under the Convention; and
  - (b) all species from time to time included in lists 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 instrument published in the *Gazette*, approve an international agreement for the purposes of subsection (3) if satisfied it is an agreement relevant to the conservation of migratory species.
- (5) An instrument mentioned in subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.



- (6) The Minister may, by instrument published in the *Gazette*, correct an inaccuracy or update the name of a migratory species.

### **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 Recklessly killing or injuring member of listed migratory species**

- (1) A person is guilty of 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.

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 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 paragraph (1)(d).

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.

#### **211A Strict liability for killing or injuring member of listed migratory species**

- (1) A person is guilty of an offence if:
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**Section 211B**

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- (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.

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 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*.

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**211B Recklessly taking etc. member of listed migratory species**

- (1) A person is guilty of 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.

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 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 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.

**211C Strict liability for taking etc. member of listed migratory species**

- (1) A person is guilty of 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.

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 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*.

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**211D Trading etc. member of listed migratory species taken in Commonwealth area**

- (1) A person is guilty of 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.

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 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 paragraph (1)(c).

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

Section 211E

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- (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.

**211E Strict liability for trading etc. member of listed migratory species taken in Commonwealth area**

- (1) A person is guilty of 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.

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 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*.

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**212 Certain actions are not offences**

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 section 20A; or
- (d) an action that:

Section 213

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- (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 section 20 or 20A; and
- (ii) is taken in accordance with a management plan that is an accredited management plan for the purposes of the declaration; 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.

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

### **213 Operation of sections 20 and 20A not affected**

To avoid doubt, sections 211, 211A, 211B, 211C, 211D, 211E 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:

**Section 214**

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- (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;
- (c) the person's action is not an action that the person was authorised by a permit to take.

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 to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.
  - (5) A person is guilty of 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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Section 215

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 notice of the application to be given to each person and body registered under section 266A (about registration for consultation on permit applications).
- (4) The notice must:
  - (a) state that an application for a permit has been made; and
  - (b) set out details of the application; and
  - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
  - (d) specify:
    - (i) an address for lodgment of submissions; and
    - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

### **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:

Section 217

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- (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:
    - (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 all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 215.

**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 is guilty of 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.

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.

Section 220

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**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.

**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**

An application may be made to the Administrative Appeals 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.

**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**

**223 Regulations**

The regulations may:

Section 223

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- (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.

## 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 citizens; and
  - (b) persons who:
    - (i) are not Australian citizens; and
    - (ii) hold permanent visas under the *Migration Act 1958*; and
    - (iii) are domiciled in Australia or an external Territory; and
  - (c) corporations incorporated in Australia or an external Territory; 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**

### **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 afforded to cetaceans in Commonwealth marine areas and prescribed waters.
- (2) The Australian Whale Sanctuary comprises:
  - (a) the waters of the exclusive economic zone (other than the coastal waters of a State or the Northern Territory); and
  - (b) so much of the coastal waters of a State or the Northern Territory as are prescribed waters; and
  - (c) any marine or tidal waters that are inside the baseline of the territorial sea adjacent to an external Territory, whether or not within the limits of an external 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.

### **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.

### **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:

Section 228

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- (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 Jarvis 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.

**Subdivision C—Offences**

**229 Recklessly killing or injuring a cetacean**

- (1) A person is guilty of 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.

Section 229A

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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) 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 is guilty of 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*.

- (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 is guilty of an offence if:
- (a) the person takes, trades, keeps, moves or interferes with a cetacean; and

Section 229C

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(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).

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.

**229C Strict liability for taking etc. a cetacean**

(1) A person is guilty of 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.



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Section 229D

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 an illegally killed or taken cetacean**

(1) A person is guilty of 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) 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.

(3) In this Act:

*treat* a cetacean means divide or cut up, or extract any product from, the cetacean.

### **230 Possession of cetaceans**

(1) Subject to section 231, a person is guilty of an offence if:

(a) the person has in his or her possession:

(i) a cetacean; or

Section 231

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- (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 this section is punishable on conviction by imprisonment for not more than 2 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
- (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
- (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
- (h) in the case of an action taken in relation to a cetacean that is not a member of a listed threatened species—the action was provided for by, and taken in accordance with, a plan of management that is accredited under section 245.

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.
- (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.

**Section 233**

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- (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 to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.
- (5) A person is guilty of 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.

**Subdivision D—Offences relating to unlawful importation**

**233 Possession of unlawfully imported cetaceans**

- (1) Subject to section 235, a person is guilty of 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 unlawfully imported.

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

- (2) An offence against this section is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

**234 Treating unlawfully imported cetaceans**

- (1) Subject to section 235, a person is guilty of an offence if:
    - (a) the person treats a cetacean; and
    - (b) the cetacean has been unlawfully imported.
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Section 235

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

- (2) An offence against this section is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1000 penalty units, or both.

**235 Sections 233 and 234 do not apply to certain actions**

Sections 233 and 234 do not apply to:

- (a) an action authorised by a permit that was issued under section 238 and is in force; 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 that is in force; or
- (c) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by 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.

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

**Subdivision E—Miscellaneous offences**

**236 Offences relating to foreign whaling vessels**

- (1) The master of a foreign whaling vessel is guilty of an offence if the vessel is brought into a port in Australia or an external Territory

Section 236

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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 whales; or
- (b) supporting the operations of a vessel or vessels designed, equipped or used for killing, taking, treating or carrying whales.

**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.

Note: The action to be covered by the permit will undergo assessment under Part 8 as it applies because of section 165.

- (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 notice of the application to be given to each person and body registered under section 266A (about registration for consultation on permit applications).
- (4) The notice must:
  - (a) state that an application for a permit has been made; and
  - (b) set out details of the application; and
  - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
  - (d) specify:
    - (i) an address for lodgment of submissions; and
    - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

### **238 Minister may issue permits**

- (1) Subject to subsections (3) and (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, 230, 233 and 234.
  - (3) The Minister must not issue the permit unless satisfied that:
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Section 238

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- (a) the specified action will contribute significantly to the conservation of cetaceans; or
- (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 and is carried out in accordance with the regulations (if any) made for the purposes of this section.

Note: In deciding whether to issue the permit, the Minister must consider the assessment report that relates to the action to be covered by the permit and was prepared as a result of Part 8 applying because of section 165.

- (3A) In making a decision on the application, the Minister must consider all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 237.
- (4) The Minister must not grant a permit authorising its holder to kill a cetacean or to take a cetacean for live display.
- (5) In this Act:

***whale watching*** means any activity conducted for the purpose of observing a whale, including but not limited to being in the water for the purposes of observing or swimming with a whale, or otherwise interacting with a whale.



### **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 is guilty of 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.
  - (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.
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Section 242

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- (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**

An application may be made to the Administrative Appeals 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.

**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 of management**

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 for a fishery made by a State or self-governing Territory and that is in force in the State or Territory;

if satisfied that:

- (c) the plan requires persons engaged in fishing under the plan to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and
- (d) the fishery to which the plan relates does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species.

### **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.

Section 247

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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.

## **Division 4—Listed marine species**

### **Subdivision A—Listing**

#### **248 Listed marine species**

- (1) The Minister must, by instrument published in the *Gazette*, 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 instrument published in the *Gazette*, amend the list:
    - (a) by including items in the list; or
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Section 250

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- (b) by deleting items from the list; or
  - (c) by correcting an inaccuracy or updating the name of a marine species.
- (2) An instrument mentioned in paragraph (1)(a) or (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) Despite section 48 of the *Acts Interpretation Act 1901* as it applies in relation to an instrument because of section 46A of that Act, amendments of a list that delete items from the list take effect on the first day on which they are no longer liable to be disallowed, or to be taken to have been disallowed, under section 48 of that Act as it so applies.
- (4) When an instrument is laid before each House of the Parliament in accordance with section 48 of the *Acts Interpretation Act 1901*, 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 instrument 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—cause the necessary instrument to be published in the *Gazette*; 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) if an instrument is published in the *Gazette* relating to an addition or deletion to which the advice relates—occurred after the publication.

### **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.

Section 253

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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 Recklessly killing or injuring member of listed marine species**

- (1) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (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.

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 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 paragraph (1)(d).

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.

**254A Strict liability for killing or injuring member of listed marine species**

- (1) A person is guilty of an offence if:
  - (a) the person takes an action; and
  - (b) the action results in the death or injury of a member of a marine species; and



Section 254B

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- (c) the member is a member of a listed marine species; and
- (d) the member 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 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*.

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**254B Recklessly taking etc. member of listed marine species**

- (1) A person is guilty of 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.

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 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 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.

**254C Strict liability for taking etc. member of listed marine species**

- (1) A person is guilty of an offence if:

Section 254D

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- (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.

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 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*.

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**254D Trading etc. member of listed marine species taken in Commonwealth area**

- (1) A person is guilty of 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.

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 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 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.

**254E Strict liability for trading etc. member of listed marine species taken in Commonwealth area**

- (1) A person is guilty of 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.

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 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*.

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**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), 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), 26(1) or (2) or 27A(1), (2), (3) or (4); and

Section 256

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- (ii) is taken in accordance with a management plan that is an accredited management plan for the purposes of the declaration; 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 of management that is accredited under section 265.

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;

(c) the person's action is not an action that the person was authorised by a permit to take.

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 to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.

(5) A person is guilty of 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).

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.

**Section 258**

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- (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 notice of the application to be given to each person and body registered under section 266A (about registration for consultation on permit applications).
- (4) The notice must:
  - (a) state that an application for a permit has been made; and
  - (b) set out details of the application; and
  - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
  - (d) specify:
    - (i) an address for lodgment of submissions; and
    - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

**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:

- (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 are 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 all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 257.

### **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 is guilty of 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.
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Section 261

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**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.

**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**

An application may be made to the Administrative Appeals 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.

### **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 of management**

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 for a fishery made by a State or self-governing Territory and that is in force in the State or Territory;

if satisfied that:

- (c) the plan requires persons engaged in fishing under the plan 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

Section 266

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- (d) the fishery to which the plan relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.

**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.

## **Division 4A—Register for consultations about permits**

### **266A Register for consultation about permit applications**

- (1) At intervals of not more than 12 months, the Minister must cause to be published a notice inviting applications from persons or bodies wishing to be registered for a specified period of at least 12 months to be told of each application for a permit under Division 1, 2, 3 or 4. The notice must be published:
  - (a) in the *Gazette*; and
  - (b) in a daily newspaper that circulates generally in each State and self-governing Territory; and
  - (c) in any other way required by the regulations (if any).
- (2) The Minister must register any person or body that applies in writing for registration.
- (3) Registration has effect for the period specified in the notice.

## **Division 5—Plans**

### **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 must ensure that a recovery plan is in force for each listed threatened species and ecological community.

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.

#### **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.

### **269A Making or adopting a recovery plan**

#### *Ensuring recovery plan is always in force*

- (1) The Minister must exercise his or her powers under this section to ensure that there is always in force a recovery plan for:
- (a) each listed threatened species (except one that is extinct or is a conservation dependent species); and
  - (b) each listed threatened ecological community;
- once the first recovery plan for the species or community has come into force.

#### *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.

Note: Section 273 requires recovery plans to be made and in force by certain deadlines.

#### *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 the States and self-governing Territories in which the species or community occurs, or with agencies of those States and Territories.

Section 269A

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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, 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 to make the plan under subsection (3):
- (a) with each of the States and self-governing Territories in which the species or community occurs; and
  - (b) in the case of a species or ecological community that occurs partly inside and partly outside a Commonwealth area—within the time required by subsection 273(2).

*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:
  - (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

Section 270

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- (c) specify the actions needed to achieve the objectives; and
  - (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).
- (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
  - (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.

### *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
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Section 270A

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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.

*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:
- (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

**Section 270B**

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- (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.

*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
  - (d) state the estimated duration and cost of the threat abatement process; and
  - (e) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and
  - (f) 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; 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

Section 272

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- (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

**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.

*Recovery plan for species and communities in Commonwealth areas only*

- (1) A recovery plan for a listed threatened species or listed threatened ecological community that occurs only in Commonwealth areas must be made and come into force:
  - (a) in the case of a native species listed in Schedule 1 to the *Endangered Species Protection Act 1992*, for which a recovery plan under that Act was not in force immediately before the commencement of this Act—within the remainder of the period allowed by section 36 of that Act for the preparation of the plan for that species; or
  - (b) in the case of a listed threatened species (other than a native species mentioned in paragraph (a)) in:

- (i) the critically endangered category—within 2 years after the species in question became included in that category; or
  - (ii) the endangered category or the extinct in the wild category—within 3 years after the species in question became included in that category; or
  - (iii) the vulnerable category—within 5 years after the species in question became included in that category; or
- (c) in the case of an ecological community (if any) listed in Schedule 2 to the *Endangered Species Protection Act 1992*, for which a recovery plan under that Act was not in force immediately before the commencement of this Act—within the remainder of the period allowed by section 36 of that Act for the preparation of the plan for that community; or
- (d) in the case of a listed threatened ecological community (other than a community mentioned in paragraph (c)) in:
- (i) the critically endangered category—within 2 years after the community in question became included in that category; or
  - (ii) the endangered category—within 3 years after the community in question became included in that category; or
  - (iii) the vulnerable category—within 5 years after the community in question became included in that category.

*Recovery plan for species and communities partly in Commonwealth areas*

- (2) A recovery plan for a listed threatened species or a listed threatened ecological community that occurs in and outside a Commonwealth area must be made:
- (a) in the case of a listed threatened species in:
    - (i) the critically endangered category—within 2 years after the species in question became included in that category; or

Section 273

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- (ii) the endangered category or the extinct in the wild category—within 3 years after the species in question became included in that category; or
- (iii) the vulnerable category—within 5 years after the species in question became included in that category; or
- (b) in the case of a listed threatened ecological community in:
  - (i) the critically endangered category—within 2 years after the community in question became included in that category; or
  - (ii) the endangered category—within 3 years after the community in question became included in that category; or
  - (iii) the vulnerable category—within 5 years after the community in question became included in that category.

*Recovery plan for species and communities wholly outside Commonwealth areas*

- (3) A recovery plan for a listed threatened species or listed threatened ecological community that occurs only outside Commonwealth areas must be made as soon as reasonably practicable after the species or ecological community is included in the list referred to in section 178 or 181 (as appropriate).

*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.

### **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:
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Section 276

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- (a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at 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:
  - (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, review and variation 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.

Section 279

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**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.
- (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;

Section 281

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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:
  - (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.

Section 282

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**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:
  - (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 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.
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### **283A Revoking a threat abatement plan**

- (1) The Minister may, by written instrument, 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 threat abatement 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).

**Section 286**

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- (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 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 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

Section 288

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relevant to the migratory species, marine species, species of cetacean or conservation dependent species to which the plan relates; and

- (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:
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- (a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at 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:

Section 293

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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 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.

Section 295

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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 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:

**Section 296**

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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 287.
- (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.

## **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 a recovery plan takes effect for the species.

### **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.

## **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.



## **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.

**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.

## **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.

Section 303A

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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.

## **Part 14—Conservation agreements**

### **304 Object of this Part**

The object of this Part is to provide for:

- (a) conservation agreements between the Commonwealth and persons related to the protection and conservation of biodiversity; and
- (b) the effect of conservation agreements; and
- (c) the publication of conservation agreements.

Conservation agreements are agreements whose primary object is to enhance the conservation of biodiversity. They may relate to private or public land, or to marine areas.

### **305 Minister may enter into conservation agreements**

- (1) Subject to subsection (2) the Minister may, on behalf of the Commonwealth, enter into an agreement, expressed to be a conservation agreement, with a person for the protection and conservation of biodiversity in the Australian jurisdiction, including:
    - (a) the protection, conservation and management of any listed species or ecological communities, or their habitats; and
    - (b) the abatement of processes, and the mitigation or avoidance of actions that might adversely affect biodiversity.
- 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) The Minister must not enter into a conservation agreement unless satisfied that:
    - (a) the proposed agreement will result in a net benefit to the conservation of biodiversity; and

Section 306

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- (b) the proposed agreement is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan.
- (3) For the purposes of paragraph (2)(a), in deciding whether a proposed agreement will result in a net benefit to biodiversity conservation, the Minister must have regard to the prescribed matters (if any).
- (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;
  - (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 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 biodiversity;
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- (b) controlling or prohibiting, in any place covered by the agreement, actions or processes that might adversely affect the species, ecological communities, habitats or potential habitats covered by the agreement;
  - (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.
- (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 biodiversity;
  - (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 the species, ecological communities, habitats or potential habitats covered by the agreement;
  - (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;
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Section 307

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- (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.

**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.

**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:
  - (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.



Section 309

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- (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:
  - (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

Section 310

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- (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 components of biodiversity.
- (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
  - (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.

## **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.

## **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;

Section 316

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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.

*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.

*Heard Island and McDonald Islands*

- (7) Despite subsections (1) and (2), the Minister may not make a plan for so much of a property as is in the Territory of Heard Island and McDonald Islands and covered by a plan:

Section 317

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- (a) that is in operation under the *Environment Protection and Management Ordinance 1987* of that Territory; and
- (b) that the Minister is satisfied is not inconsistent with:
  - (i) Australia's obligations under the World Heritage Convention; or
  - (ii) the Australian World Heritage management principles.

**317 Notice of plans**

The Minister must give notice of the making of a plan under section 316, in accordance with the regulations.

**318 Compliance with plans**

The Commonwealth or a Commonwealth agency must not contravene a plan made by the Minister under section 316.

**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.

### **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
  - (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.

**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.
- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

## **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.

## **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;

- (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.

**Section 328**

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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.

*Heard Island and McDonald Islands*

- (7) Despite subsections (1) and (2), the Minister may not make a plan for so much of a wetland as is in the Territory of Heard Island and McDonald Islands and covered by a plan:
- (a) that is in operation under the *Environment Protection and Management Ordinance 1987* of that Territory; and
  - (b) that the Minister is satisfied is not inconsistent with:
    - (i) Australia's obligations under the Ramsar Convention; or
    - (ii) the Australian Ramsar management principles.

### **329 Notice of plans**

The Minister must give notice of the making of a plan under section 328, in accordance with the regulations.

### **330 Compliance with plans**

The Commonwealth or a Commonwealth agency must not contravene a plan made by the Minister under section 328.

### **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.

Section 333

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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*.



- (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.

## **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.

### **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.

## **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.

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## **Subdivision B—Declaring and revoking Commonwealth reserves**

### **343 Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

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

Section 344

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- (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
- (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 Uluru-Kata Tjuta 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;
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the Commonwealth must not acquire the land for the purposes of declaring it a Commonwealth reserve, without the consent of the State or Territory.

*Uluru-Kata Tjuta National Park*

- (3) ***Uluru-Kata Tjuta National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Uluru-Kata Tjuta 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.
- (2) If the Commonwealth acquires a usage right relating to land or seabed in a Commonwealth reserve, the usage right vests in the Director.

Section 346

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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 one of the following categories (the ***IUCN categories***):
    - (i) strict nature reserve;
    - (ii) wilderness area;
    - (iii) national park;
    - (iv) natural monument;
    - (v) habitat/species management area;
    - (vi) protected landscape/seascape;
    - (vii) managed resource protected area.

*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**

#### *Prerequisite to making Proclamation*

- (1) Before the Governor-General makes a Proclamation assigning a Commonwealth reserve, or a zone within a Commonwealth reserve, to a particular IUCN category, the Minister must be satisfied:
  - (a) that the reserve or zone:
    - (i) has the characteristics listed in subsection (2) 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.

#### *Characteristics for IUCN categories*

- (2) The characteristics are as follows:
  - (a) for a strict nature reserve—the Commonwealth reserve or zone contains some outstanding or representative ecosystems, geological or physiological features or species;
  - (b) for a wilderness area—the Commonwealth reserve or zone consists of a large area of land, sea or both that:
    - (i) is unmodified, or only slightly modified, by modern or colonial society; and
    - (ii) retains its natural character; and
    - (iii) does not contain permanent or significant habitation;
  - (c) for a national park—the Commonwealth reserve or zone consists of an area of land, sea or both in natural condition;
  - (d) for a natural monument—the Commonwealth reserve or zone contains a specific natural feature, or natural and cultural feature, of outstanding value because of its rarity, representativeness, aesthetic quality or cultural significance;

Section 348

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- (e) for a habitat/species management area—the Commonwealth reserve or zone contains habitat for one or more species; and
- (f) for a protected landscape/seascape—the Commonwealth reserve or zone contains an area of land (with or without sea) where the interaction of people and nature over time has given the area a distinct character with significant aesthetic, cultural or ecological value;
- (g) for a managed resource protected area—the Commonwealth reserve or zone contains natural systems largely unmodified by modern or colonial technology.

**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.

**349 Proclamations assigning reserve or zone to wilderness area category may affect management**

A Proclamation assigning a Commonwealth reserve, or a zone of a Commonwealth reserve, to the IUCN category of wilderness area may contain provisions regulating the circumstances in which, and the manner in which, the Director may do one of the following acts if there is not a management plan in operation for the reserve:

- (a) kill, injure, take, trade, keep or move a member of a native species;
- (b) damage heritage;
- (c) carry on an excavation;
- (d) erect a building or other structure;
- (da) carry out works;
- (db) take an action for commercial purposes;

- (e) establish a track;
- (f) use a vehicle, aircraft or vessel;
- (g) inundate land by means of a dam or other works for affecting the flow of water (whether they are inside or outside the reserve or zone);
- (h) extract water by canals or other works for affecting the flow of water (whether they are inside or outside the reserve or zone).

### **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.
- (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.

Section 351

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- (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 22 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.

*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

Section 351

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- (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.

*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

Section 352

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- (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
  - (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.
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Section 354

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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;
- (b) for a body corporate—5,000 penalty units.

Note: These acts are totally prohibited in wilderness areas (except so far as the Director is concerned). See section 360.

- (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

Section 355

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- (e) managing the effects of actions taken under a usage right described in section 359.

Note: The Director may only do these acts in a wilderness area under a management plan or Proclamation. See section 360.

- (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.

- (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:

- (i) section 359 (about interests and rights existing before a Commonwealth reserve); and
- (ii) section 360 (about wilderness areas); 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).

### 355 Limits on mining operations in Commonwealth reserves

- (1) A person must not carry on mining operations in a Commonwealth reserve unless:

- (a) the Governor-General has approved the operations; and
- (b) the person carries them on in accordance with a management plan in operation for the reserve.

Note: Section 387 generally prohibits mining operations in Kakadu National Park.

- (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;
  - (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.
- (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 387 (about mining operations in Kakadu National  
Park); and
  - (c) the *Antarctic Treaty (Environment Protection) Act 1980*;  
but has effect despite any other law of the Commonwealth, a State  
or a Territory.

### **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

Section 356

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- (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 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
    - (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
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- (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
  - (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

**Section 356A**

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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:
    - (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
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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.

### **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.

Section 359

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- (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.
  - (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:
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Section 359A

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- (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
  - (b) expressly affect the traditional use of the area by indigenous persons.

**360 Activities in wilderness areas**

- (1) This section applies only to a Commonwealth reserve, or a zone of a Commonwealth reserve, that is assigned by a Proclamation under Subdivision B or a management plan for the reserve to the IUCN category of wilderness area.
- (2) The Commonwealth reserve or zone must be maintained in its natural state.
- (3) A person may use the Commonwealth reserve or zone only for:
  - (a) scientific research authorised by the Director; or
  - (b) a purpose (except recovery of minerals) specified in the provisions of the management plan for the reserve that relate to the zone.

Section 360

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- (4) A person other than the Director must not do any of the following acts in the Commonwealth reserve or zone:
- (a) kill, injure, take, trade, keep or move a member of a native species;
  - (b) damage heritage;
  - (c) carry on an excavation;
  - (d) erect a building or other structure;
  - (da) carry out works;
  - (db) take an action for commercial purposes;
  - (e) establish a track;
  - (f) use a vehicle, aircraft or vessel;
  - (g) inundate land by means of a dam or other works for affecting the flow of water (whether they are inside or outside the reserve or zone);
  - (h) extract water by canals or other works for affecting the flow of water (whether they are inside or outside the reserve or zone).
- Civil penalty:
- (a) for an individual—500 penalty units;
  - (b) for a body corporate—5,000 penalty units.
- (5) The Director must not do an act described in subsection (4) in the Commonwealth reserve or zone, except for purposes essential to the management of the reserve or zone and in accordance with:
- (a) the provisions of the management plan in operation for the reserve or zone; or
  - (b) if there is not a management plan in operation for the reserve or zone and a Proclamation assigned the reserve or zone to the IUCN category of wilderness area—the provisions of the Proclamation.
- (6) This section has effect despite any other law of the Commonwealth, a State or a Territory, but is subject to section 359 (about usage rights existing before a Commonwealth reserve) and to the *Antarctic Treaty (Environment Protection) Act 1980*.



## **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.
- (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:
  - (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 Grant (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:
- (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.

**Section 365**

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- (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.

**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:
  - (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:
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Section 367

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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.

**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
    - (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).
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*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 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.

*Plans for different reserves may appear together*

- (5) A management plan for a Commonwealth reserve may be in the same document as a management plan for another 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:
  - (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
- (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

Section 368

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- (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.

*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

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Section 369

- (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
- (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:

Section 370

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- (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.

**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.

Section 371

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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
  - (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 disallowable instruments**

- (1) A management plan approved for a Commonwealth reserve by the Minister is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Section 372

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Note: Section 46A of the *Acts Interpretation Act 1901* provides for the commencement, tabling and disallowance of disallowable instruments.

- (2) To avoid doubt, the provisions mentioned in section 46A of the *Acts Interpretation Act 1901* apply as if the approval of the management plan were the making of the plan.
- (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.

**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 7 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.

### **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:
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**Section 378**

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- (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
  - (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:
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- (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
- (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*
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Section 379

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*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.

**379 Appointment of Board members**

*Appointment of qualified persons*

- (1) The Minister may appoint a person in writing on a part-time basis to a position of member of a Board if the person is qualified for appointment to the position.

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.

**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 subsection 33(4A) 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*.

### **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.

Section 382

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*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 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.

**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.
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**Section 384**

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- (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).

**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

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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 Bunday and Eva Valley.
- (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) and subsection 355(1) do 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

Section 388

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- (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 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:
    - (i) subsection (2) or (3); 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 develop a township only:
  - (a) on land that the person holds under lease or sub-lease from the Director; or
  - (b) on land that was developed before 9 June 1978, if the township was established before it was included in the reserve.
- (3) The Director may develop a township only if the township did not exist before its site became part of the Commonwealth reserve.
- (4) A person may only construct, alter or demolish a building or structure in a township in accordance with the management plan for the Commonwealth reserve and the town plan.



### **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:
  - (a) the site of the township and the general purposes of the township, if the township was not established before its site was included in the reserve; and
  - (b) the terms and conditions of any lease or sub-lease from the Director of land on which the township is to be established or developed; and
  - (c) the purposes of any zones into which the township is to be divided.

#### *Town plan provisions*

- (2) A town plan must make detailed provision relating to the proposed construction or development of the township, including, in particular, the provision (if any) to be made for:
    - (a) housing, shops, offices and other buildings and structures; and
    - (b) bridges, railways, roads, streets, footpaths and parking areas; and
    - (c) the supply of water, electricity and gas; and
    - (d) the standards to be maintained in the construction and alteration of buildings and structures; and
    - (e) sewerage and drainage; and
    - (f) public amenities for recreation and other purposes; and
    - (g) any other matters that are specified for the purposes of this paragraph by:
      - (i) the management plan for the Commonwealth reserve containing the township; or
      - (ii) the regulations; or
      - (iii) any lease or sub-lease from the Director of land on which the township is to be established or developed.
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**Section 390**

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*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:
- (a) the provisions of any law of the Northern Territory (or a part of the Territory) that would not otherwise apply in relation to the township, 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.

*Town plans must not be inconsistent with other instruments*

- (4) A town plan must never be inconsistent with:
- (a) the management plan for the Commonwealth reserve that includes the township; or
  - (b) any lease or sub-lease from the Director of land on which the township is to be established or developed.

*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
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- (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
    - (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
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**Section 390A**

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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
    - (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.

Section 390A

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- (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.

## **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 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

Section 390E

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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:
- (a) regulate the carrying on of mining operations, fishing, pastoral or agricultural activities for commercial purposes; and
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**Section 390F**

- (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 provision is not inconsistent with such a law if it can be complied with without contravention of the law.

**Section 390H**

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*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.
- (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.

## Chapter 6—Administration

### Part 16—Application of precautionary principle in decision-making

#### 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:

<b>Decisions in which precautionary principle must be considered</b>		
<b>Item</b>	<b>Section decision is made under</b>	<b>Nature of decision</b>
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

<b>Decisions in which precautionary principle must be considered</b>		
<b>Item</b>	<b>Section decision is made under</b>	<b>Nature of decision</b>
5	237	whether or not to grant a permit
6	258	whether or not to grant a permit
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
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
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
14	370	about approving a management plan for a Commonwealth reserve

## **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 the Secretary of another Department of the Australian Public Service, 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 Department 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;

to perform or exercise all or any of the functions or powers of wardens or rangers under this Act or the regulations.

- (3) The Minister may enter into an arrangement with the appropriate person holding an office under section 13 of the *Norfolk Island Act 1979* for persons appointed or employed under an enactment referred to in section 61 of that Act 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 the Secretary of a Department of the Australian Public Service, 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 in relation to Commonwealth reserves or conservation zones by officers or employees in the Department or authority.

### **394 Wardens *ex officio***

By force of this section each member or special member of the Australian Federal Police is a warden.

### **395 Identity cards**

- (1) The Minister must issue to each warden (except a member of a police force) 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) is guilty of 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 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*

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 section 43 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).

### 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;to be inspectors, and that arrangement has effect accordingly.



- (2) The Minister may enter into an arrangement with the appropriate person holding an office under section 13 of the *Norfolk Island Act 1979* for persons appointed or employed under an enactment referred to in section 61 of that Act 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, (except a member of a police force), 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 an inspector, the person must immediately return his or her identity card to the Minister.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding one penalty unit.

### **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.

Section 401

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**401 Impersonating authorised officers and rangers**

- (1) A person is guilty of 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
  - (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 is guilty of 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:

Section 402

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- (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 is guilty of an offence if the person:
- (a) uses or threatens violence against another person; and
  - (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 is guilty of 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.

Section 402

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- (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.

## **Division 2—Boarding of vessels etc. and access to premises by consent**

### **403 Boarding of vessels etc. by authorised officers**

- (1) This section applies to:
  - (a) any Australian vessel, Australian aircraft or Australian platform;
  - (b) any vehicle, vessel or aircraft that is in Australia or an external Territory;
  - (c) any vessel, or any aircraft capable of landing on water, that is in the territorial sea of Australia or an external Territory; and
  - (d) any aircraft that is over or in Australia or an external Territory.
- (2) If an authorised officer suspects on reasonable grounds that there is in, or on, a vehicle, vessel, aircraft or platform any evidential material, 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.
- (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 which is in the territorial sea of Australia or an external Territory has been used or otherwise involved in the commission of an offence against this Act or the regulations, 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

Section 403

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- (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) If an authorised officer or the person in command of a Commonwealth ship or of a Commonwealth aircraft suspects on reasonable grounds that:
  - (a) an aircraft has been used or otherwise involved in the commission of an offence against this Act or the regulations; and
  - (b) the aircraft is over or in Australia or an external Territory; he or she may, by means of an international signal code or other internationally recognised means of communication with an aircraft, require the person in charge of the aircraft 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.
- (5) An authorised officer may, for the purposes of this Act, require the person in charge of a vehicle, vessel, aircraft or platform to give information concerning the vehicle, vessel, aircraft or platform and its crew and any other person on board the vehicle, vessel, aircraft or platform.
- (6) In this Act:

***Australian platform*** means a platform that:

- (a) is fixed to the continental shelf of Australia or of an external Territory, or to the sea-bed between Australian waters; or
- (b) is otherwise operating in that part of the sea above the continental shelf of Australia or of an external Territory, or in the territorial sea of Australia or an external Territory.

***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.

#### **404 Authorised officers to produce identification**

- (1) If an authorised officer (other than a member of a police force who is in uniform) boards a vehicle, vessel, aircraft or platform to which section 403 applies, 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
  - (b) in any other case—produce his or her identity card for inspection by that person.
- (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 (other than a member of a police force who is in uniform) 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
  - (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 requirement.
- (4) A person must comply with a requirement made of the person under section 403.

Penalty: 50 penalty units.

Section 405

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**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 (except subsection 406(4)).
- (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 (except subsection 406(4)).
- (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.

**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; and
    - (c) inspect, and take samples of, any other evidential material; 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
    - (d) exercise powers of seizure conferred on the authorised officer by this Act; and
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- (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 paragraph (a), (aa), (b), (c), (ca) or (d).
- (2) Each of the following things, including any such thing in electronic form, is *evidential material*:
- (a) a thing with respect to which an offence against this Act or the regulations has been committed or is suspected, on reasonable grounds, to have been committed;
  - (b) a thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of an offence against this Act or the regulations;
  - (c) a thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing an offence against this Act or the regulations.
- (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 used as a receptacle), on a vehicle, vessel, aircraft or platform or on any premises.
- (4) An authorised officer who boards a vehicle, vessel, aircraft or platform under section 403 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.
- (5) A person is guilty of an offence if:
- (a) an authorised officer has boarded a vehicle, vessel, aircraft or platform under section 403; and
  - (b) the person is on the vehicle, vessel, aircraft or platform; and
  - (c) the authorised officer requires the person to:
    - (i) answer a question asked by the authorised officer; or
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Section 406

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- (ii) give the authorised officer information requested by the authorised officer; or
  - (iii) produce to the authorised officer records or documents kept on the vehicle, vessel, aircraft or platform; and
  - (d) the person contravenes the requirement.
- (6) 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.

## **Division 3—Monitoring of compliance**

### **407 Monitoring powers**

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;
- (d) the power to take extracts from, or make copies of, any document, book or record on the premises;
- (e) the power to take onto the premises any equipment or material reasonably necessary for the purpose of exercising a power referred to in paragraph (a), (b), (c), (ca) or (d).

### **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 this Act or the regulations are being 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 this Act or the regulations are being complied with.

Section 408

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*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 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.

*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
  - (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.

## **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**.

*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 this Act or the regulations are being complied with.

*Information about grounds for issue of monitoring warrant*

- (3) The magistrate must not issue the monitoring warrant unless the authorised person 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) authorise an authorised officer named in the monitoring warrant, with such assistance and by such force as is

Section 410

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necessary and reasonable, from time to time while the monitoring warrant remains in force, to enter the premises and exercise monitoring powers; and

- (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 445.

**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 authorised officer named in the monitoring warrant must make available to that person a copy of the monitoring warrant.
- (2) The authorised officer named in the monitoring warrant 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 1C 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) The authorised officer named in a monitoring warrant must, before any person enters premises under the monitoring warrant:
  - (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 monitoring warrant is not frustrated.

#### **412A Other powers when on premises under monitoring warrant**

- (1) If the authorised officer named in a monitoring warrant enters premises under the warrant, he or she may require a person on the premises 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 premises.
  - (2) A person is guilty of an offence if:
    - (a) the authorised officer named in a monitoring warrant has entered premises under the warrant; and
    - (b) the person is on the premises; and
    - (c) the authorised officer requires the person to:
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Section 412A

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- (i) answer a question asked by the authorised officer; or
  - (ii) give the authorised officer information requested by the authorised officer; or
  - (iii) produce to the authorised 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.



## **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 that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises.
- (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 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.
- (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 for a warrant relating to the same person or premises, the person must state particulars of those applications and their outcome in the information.

Section 414

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**414 Statements in warrants**

- (1) If a magistrate issues a warrant under section 413, the magistrate is to state in the warrant:
  - (a) the offence 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 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) whether the warrant may be executed at any time or only during particular hours.
  
- (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 to which the warrant relates; or
    - (ii) evidential material in relation to another offence against this Act, where the other offence is an indictable offence;  
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 this Act or the regulations; 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

Section 414

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any evidential material or eligible seizable items in his or her possession.

- (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:
    - (i) evidential material in relation to an offence to which the warrant relates; or
    - (ii) evidential material in relation to another offence against this Act, where the other offence is an indictable offence;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 this Act or the regulations; 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.

Section 415

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**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.
- (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 person may make an application to a magistrate for a warrant by telephone, telex, facsimile 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.

*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.

*Notification*

- (5) If the magistrate decides to issue the warrant, the magistrate is to inform the applicant, by telephone, telex, facsimile 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—that information duly sworn.

Section 417

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*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.

**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 to which the warrant relates; or
    - (ii) evidential material in relation to another offence against this Act, where the other offence is an indictable offence;

Section 417

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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 this Act or the regulations; 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 reasonable grounds that the person has any evidential material or eligible seizable items in his or her possession.

*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 to which the warrant relates; or
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Section 418

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- (ii) evidential material in relation to another offence against this Act, where the other offence is an indictable offence;  
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 this Act or the regulations;  
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 search warrant may be executed*

- (3) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

*Ordinary searches or frisk searches*

- (4) If the 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:
  - (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.

#### **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.
- (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.

Section 421

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- (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.
- (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 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.

##### *Seizure etc.*

- (2) If the executing officer or an officer assisting, after operating the equipment, finds that evidential 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 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;

Section 422

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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:
- (a) evidential 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*

- (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 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.

Section 424

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- (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
  - (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 1C 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.

#### **427 Restrictions on personal searches**

A warrant can not 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.

## **Division 5—Stopping and searching aircraft, vehicles or vessels**

### **429 Searches of aircraft, vehicles or vessels without warrant in emergency situations**

- (1) This section applies if an authorised officer suspects, on reasonable grounds, that:
    - (a) evidential material in relation to an indictable offence against this Act is in or on an aircraft, vehicle or vessel; and
    - (b) it is necessary to exercise a power under subsection (2) in order to prevent the thing from being concealed, lost or destroyed; and
    - (c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.
  - (2) The authorised officer may:
    - (a) stop and detain the aircraft, vehicle or vessel; and
    - (b) search the aircraft, vehicle or vessel and any container in or on it, for the evidential material; and
    - (c) seize the evidential material if he or she finds it there.
  - (3) If, in the course of searching for the evidential material, the authorised officer finds any other evidential material in relation to any other offence against this Act or the regulations, he or she may seize that material if he or she suspects, on reasonable grounds, that:
    - (a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and
    - (b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.
  - (4) When an authorised officer exercises a power under this section, he or she:
    - (a) may use such assistance as is necessary; and
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- (b) must search the aircraft, vehicle or vessel in a public place or in some other place to which members of the public have ready access; and
- (c) must not detain the aircraft, vehicle or vessel for longer than is necessary and reasonable to search it and any container found in or on it; and
- (d) may use such force as is necessary and reasonable in the circumstances, but must not damage the aircraft, vehicle or vessel or any container found in or on it by forcing open a part of the aircraft, vehicle or vessel or container unless:
  - (i) the person (if any) apparently in charge of the aircraft, vehicle or vessel has been given a reasonable opportunity to open that part or container; or
  - (ii) it is not possible to give that person such an opportunity.

## **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 this Act or the regulations; and
  - (b) proceedings against the person by summons would not be effective.
- (2) If an authorised officer (other than a member of a police force who is in uniform) 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
  - (b) in any other case—produce his or her identity card for inspection by that person.
- (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.

### **431 Power to conduct a frisk search of an arrested person**

An authorised officer who arrests a person for an offence against this Act or the regulations, 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 this Act or the regulations, 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 this Act or the regulations; or
- (b) an eligible seizable item;

conduct an ordinary search of the arrested person at or soon after the time of 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 this Act or the regulations, 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 this Act or the regulations; or
- (b) an eligible seizable item.

## **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 is guilty of 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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Section 438

- (a) state in a document that purports to be a form of warrant under section 416 the name of a magistrate unless the magistrate issued the warrant; or
- (b) state on a form of warrant under that section 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 that section 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 that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

**438 Retention of things which are seized**

- (1) Subject to any contrary order of a court, if a person seizes a thing under Division 4, 5 or 6 the person must return it if:
  - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
  - (b) if the thing was seized under section 429:
    - (i) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
    - (ii) the period of 60 days after its seizure ends; whichever first occurs;unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (2) If a thing is seized by an authorised officer under section 429, at the end of the 60 days specified in subsection (1), he or she must take reasonable steps to return the thing to the person from whom it

Section 439

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was seized (or to the owner if that person is not entitled to possess it) unless:

- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
- (b) the authorised officer may retain the thing because of an order under section 439; or
- (c) the 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 or dispose of the thing.

**439 Magistrate may permit a thing to be retained**

- (1) If a thing is seized under section 429, and:
  - (a) before the end of 60 days after the seizure; or
  - (b) before the end of a period previously specified in an order of a magistrate under this section;proceedings in respect of which the thing may afford evidence have not commenced, the authorised officer may apply to a magistrate for an order that he or she may retain the thing for a further period.
- (2) If the magistrate is satisfied that it is necessary for the authorised officer to continue to retain the thing:
  - (a) for the purposes of an investigation as to whether an offence against this Act or the regulations has been committed; or
  - (b) to enable evidence of an offence against this Act or the regulations to be secured for the purposes of a prosecution;the magistrate may order that the authorised officer may retain the thing for a period specified in the order.
- (3) Before making the application, the authorised officer must:
  - (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, notify each person who the authorised officer believes to have such an interest in the proposed application.
- (4) A function of making an order conferred on a magistrate by this section is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (5) Without limiting the generality of subsection (4), an order made by a magistrate under this section has effect only by virtue of this Act and is not taken, by implication, to be made by a court.
- (6) A magistrate performing a function of, or connected with, making an order under this section 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).
- (7) The Governor-General may make arrangements with the Governor of a State, the Chief Minister of the Australian Capital Territory, the Administrator of the Northern Territory or the Administrator of Norfolk Island 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 this section.

#### **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.

Section 442

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- (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
  - (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 429;
- 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 (other than a member of a police force who is in uniform) makes a request of a person under this section, the authorised officer must:



Section 442

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- (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
  - (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.

## 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.

*goods* includes baggage.

## **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 this Act or the regulations.
- (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 is guilty of 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
  - (b) in any other case—the authorised officer produces his or her identity card for inspection by the person.

## **Division 10—Seizure and forfeiture etc.**

### **Subdivision A—Seizure of goods**

#### **445 Seizure of goods**

- (1) This section applies to any goods, including vehicles, vessels, aircraft, platforms, documents and organisms.
- (2) An authorised officer may seize goods if he or she has reasonable grounds to suspect that:
  - (a) the goods have been used or otherwise involved in the commission of an offence against this Act or the regulations;
  - or
  - (b) the goods will afford evidence of the commission of an offence against this Act or the regulations.

#### **446 Retention of goods that have been seized**

- (1) Goods seized under section 445 may be retained until:
  - (a) the end of the period of 60 days after the seizure or the end of such extended period as is, or such extended periods as are, determined under subsection (3); or
  - (b) if:
    - (i) proceedings for an offence against this Act or the regulations are instituted within that period; and
    - (ii) the goods may have been used or otherwise involved in the commission of the offence or the goods may afford evidence of the commission of the offence;the proceedings (including any appeal to a court in relation to those proceedings) are terminated.
- (2) An authorised officer may apply to a magistrate for an extension of the period during which the authorised officer is entitled to retain particular goods seized under section 445.

Section 447

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- (3) If the magistrate is satisfied that the retention of the goods for an extended period is warranted, the magistrate may make an order extending the period during which the goods may be retained. The maximum period of an individual extension is 30 days.
- (4) Subsection (3) does not prevent a magistrate from granting 2 or more successive extensions under that subsection of the period during which particular goods 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, the Administrator of the Northern Territory or the Administrator of Norfolk Island 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).

**447 Disposal of goods if there is no owner or owner cannot be located**

If:

- (a) goods are seized under section 445; and
- (b) apart from this section, the Commonwealth is required to return the goods to the owner; and
- (c) there is no owner or the Secretary cannot, despite making reasonable efforts, locate the owner;

the Secretary may dispose of the goods in such manner as the Secretary thinks appropriate.

#### **448 Release of goods that have been seized**

The Secretary may authorise goods seized under section 445 or anything in, on or attached to such goods to be released to their owner, or to the person from whose possession they were 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 their value if they are forfeited).

#### **Subdivision B—Immediate disposal of seized items**

##### **449 Immediate disposal of seized items**

- (1) If:
  - (a) a thing is seized under this Division; and
  - (b) it is reasonably likely that the retention of the thing would:
    - (i) constitute a serious threat to the environment; or
    - (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—constitute a significant threat to the health of the organism;

the Secretary may cause the thing to be dealt with in such manner as the Secretary considers appropriate (including the destruction of the thing).

- (2) Subject to subsection (3), if a thing is dealt with in accordance with subsection (1), the Secretary must give to:

**Section 450**

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- (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 Division 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.

- (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.

**Subdivision C—Court-ordered forfeiture**

**450 Court-ordered forfeiture**

- (1) If a court convicts a person of an offence against this Act or the regulations, the court may order the forfeiture to the Commonwealth of any thing used or otherwise involved in the commission of the offence.



- (2) A court may make an order under subsection (1) even if the thing has been seized under this Act.

### **Subdivision D—Dealings in forfeited items**

#### **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.

### **Subdivision E—Delivery of forfeited items to the Commonwealth**

#### **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;
- the person must deliver the thing to the Secretary.
- (2) A person must not contravene subsection (1).
- Penalty: Imprisonment for 2 years.

## **Subdivision F—Keeping of organisms that have been seized**

### **453 Keeping of organisms retained under this Part**

If a person is authorised under this Part to retain an organism, the person may do so by causing the organism to be taken to, and kept at, a place approved by the Secretary for the purpose of keeping organisms seized under this Division.

### **454 Recovery of costs of storing or keeping organisms**

- (1) If an organism 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;
  - (b) reasonable costs incurred by the Commonwealth in transporting the organism;
  - (c) reasonable costs incurred by the Commonwealth in maintaining the organism.
- (2) If:
  - (a) an organism is seized under this Division; and
  - (b) the organism 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.
- (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.
- (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 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 goods**

### **455 Rescuing goods**

A person is guilty of an offence punishable upon conviction by imprisonment for a term not exceeding 2 years if:

- (a) the person rescues any goods; and
- (b) the goods have been, or are about to be, seized under this Act.

### **456 Breaking or destroying goods or documents to prevent seizure etc.**

- (1) A person must not:
- (a) stave, break or destroy any goods in order to prevent the seizure of goods, the securing of goods, or the proof of any offence under this Act; or
  - (b) destroy any documents relating to any goods in order to prevent the seizure of goods, the securing of goods, or the proof of any offence under this Act.

Penalty: Imprisonment for 2 years.

- (2) This section applies to vehicles, vessels, aircraft, platforms, documents and organisms in the same way as it applies to goods.

## **Division 11—Powers of pursuit**

### **457 Power to pursue persons etc.**

- (1) An authorised officer may exercise in relation to vessels (other than Australian vessels) and foreign nationals in any place (except the territorial sea of another country) a power conferred on the authorised officer under section 403, 406 or 430 if:
  - (a) one or more authorised officers (whether or not including the authorised officer exercising the power) have pursued the person or vessel from a place within the Australian jurisdiction to such a place; and
  - (b) the pursuit was not terminated or interrupted at any time before the authorised officer concerned arrived at such a place with a view to exercising that power.
- (2) For the purposes of paragraph (1)(b), a pursuit of a person or vessel is not taken to be terminated or interrupted only because the authorised officer or officers concerned lose sight of the person or vessel.
- (3) A reference in subsection (2) to losing sight of a person or vessel includes losing output from a radar or other sensing device.

## **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.
- (4) For the purposes of this Act, an *environmental authority* is:

Section 459

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- (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 is guilty of an offence, punishable on conviction by a fine not exceeding 30 penalty units.

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 is guilty of 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:
  - (a) on or before the date specified by the Minister under paragraph 458(2)(c); or

Section 462

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- (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 is guilty of 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 is guilty of 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.



## **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.

Section 465

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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.

#### **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

Section 468

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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.

#### **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.
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Section 471

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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.

**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 notice of advice is given to a person who is not a Commonwealth agency, it must include:
  - (a) a statement to the effect that, if the person is dissatisfied with the Minister's decision to give that advice, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be

made to the Administrative Appeals Tribunal for review of the decision; and

- (b) a statement to the effect that the person may request a statement under section 28 of that Act in relation to the decision.

#### **473 Review by the Administrative Appeals Tribunal**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of the Minister's decision to give the advice.
- (2) Despite section 27 of the *Administrative Appeals Tribunal Act 1975*, 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;
  - (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.

## 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.



*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

Section 476

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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).

*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.

**478 No undertakings as to damages**

The Federal Court is not to require an applicant for an injunction to give an undertaking as to damages as a condition of granting an interim 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

Section 480

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- (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:
  - (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.

## **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.

Section 482

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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.

#### **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.

#### **486 Gathering information for application for pecuniary penalty**

- (1) This section applies if it appears to the Minister that a person (the *wrongdoer*) may have contravened a civil penalty provision.
- (2) If the Minister, on reasonable grounds, suspects or believes that a person other than the wrongdoer can give information relevant to an application for a civil penalty order in relation to the contravention, whether or not such an application has been made, the Minister may, by writing given to the person, require the person to give all reasonable assistance in connection with such an application.
- (3) Subsection (2) does not apply in relation to a duly qualified legal practitioner who is acting, or has acted, for the wrongdoer.
- (4) If a person fails to give assistance as required under subsection (2):
  - (a) the person contravenes this subsection; and
  - (b) the Federal Court may, on the application of the Minister, order the person to comply with the requirement as specified in the order.

#### **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.

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Section 486B

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**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.

**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.



## **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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Section 488

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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.

## **Division 17—Duty to provide accurate information**

### **489 Providing false or misleading information to obtain approval or permit**

- (1) A person is guilty of an offence if:
- (a) the person provides information in response to a requirement or request under Part 7, 8, 9 or 13; 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 is guilty of an offence if:
- (a) the person provides information in response to a requirement or request under Part 7, 8, 9 or 13; 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.

**Section 490**

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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 is guilty of 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.

**491 Providing false or misleading information to authorised officer etc.**

- (1) A person is guilty of 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.

## **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 a provision of Part 3 that is a civil penalty provision or section 142; 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.

### **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 is guilty of 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
  - (ii) section 17B (Offences relating to declared Ramsar wetlands); or
  - (iii) section 18A (Offences relating to threatened species etc.); or
  - (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
  - (vii) section 27A (Offences relating to Commonwealth land); or
  - (viii) section 142A (Offence of breaching conditions on approval); and

Section 496

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- (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 is guilty of 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 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
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- 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 environmental 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.

## **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 the regulations to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

## **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.

## **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 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, 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.

## **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:

Section 500

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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:

Section 501

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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.

## **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 the making of recovery plans and threat abatement plans; 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.



## **Division 2—Establishment and functions of the Biological Diversity Advisory Committee**

### **504 Establishment**

- (1) The Biological Diversity 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.
- (4) The Minister must ensure that the membership includes members who are appointed to represent the following:
  - (a) the body known as the Australian and New Zealand Environment and Conservation Council;
  - (b) conservation organisations that are not authorities of the Commonwealth or of any State or Territory;
  - (c) the scientific community (including both that part of the scientific community concerned with marine species and that part of the scientific community concerned with terrestrial species);
  - (d) the rural community;
  - (e) the business community;
  - (ea) indigenous peoples;
  - (f) the Commonwealth.
- (5) The Minister must ensure that, as far as practicable, each one of at least 5 members:
  - (a) possess scientific qualifications that the Minister thinks relevant to the performance of the Committee's functions;and

**Chapter 6** Administration

**Part 19** Organisations

**Division 2** Establishment and functions of the Biological Diversity Advisory Committee

**Section 505**

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- (b) is appointed to represent the scientific community and is not appointed to represent any of the other bodies, groups of bodies or communities referred to in subsection (4).
- (6) The Minister must ensure that a majority of the members are not persons employed by the Commonwealth or Commonwealth agencies.

**505 Functions of the Committee**

The functions of the Committee are:

- (a) to advise the Minister, at his or her request, on matters relating to the conservation and ecologically sustainable use of biological diversity; and
- (b) to perform such other functions as are conferred on the Committee by this Act or the regulations.

## **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.

## **Division 3—Members and procedures of Committees**

### **506 Application**

This Division applies to the following Committees:

- (a) the Threatened Species Scientific Committee;
- (b) the Biological Diversity Advisory Committee;
- (c) the Indigenous Advisory Committee.

### **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.

- (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

Section 510

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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.

Section 510

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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.

## **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.



**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.

## **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 *Commonwealth Authorities and Companies Act 1997* applies to the Director. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

#### **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
  - (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
  - (f) to make recommendations to the Minister in relation to the establishment and management of Commonwealth reserves; and

Section 514C

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- (g) to administer the Australian National Parks Fund; and
- (h) any other functions conferred on the Director under 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: Section 514D sets out requirements relating to the performance of the Director's functions.

- (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.

Note: Section 514D sets out limits on the Director's powers.

Section 514D

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**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.

*Australian National Botanic Gardens in Jervis Bay Territory*

- (3) The Director must consult and have regard to the views of the Chairperson of the Wreck Bay Aboriginal Community Council in relation to the performance of the Director's functions and the exercise of the Director's powers in relation to the part of the Commonwealth reserve known as the Australian National Botanic Gardens that is in the Jervis Bay Territory.

*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) \$250,000; or
    - (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
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Section 514G

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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 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.
- (2) A person acting as the Director is taken to constitute the corporation mentioned in section 514A while the person is acting.
- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

**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*.

### **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.

### **514L Disclosure of interests**

If the person appointed as the Director has a material personal interest in a matter that he or she is considering or is about to consider as the Director, the person must give written notice of the interest to the Minister.

### **514M Leave of absence**

- (1) Subject to section 87E of the *Public Service Act 1922*, 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.

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Section 514P

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**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; or
  - (d) the person fails, without reasonable excuse, to comply with section 514L.

**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
  - (ii) the Minister administering the *Commonwealth Authorities and Companies Act 1997* 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.

Section 514U

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- (2) Subsection (1) does not prevent investment of surplus money of the Fund under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

**Subdivision E—Accountability**

**514U Modification of the *Commonwealth Authorities and Companies Act 1997***

- (1) Sections 514A and 514E provide that the Director is a corporation. The *Commonwealth Authorities and Companies Act 1997* applies (subject to subsections (2) and (3)) in relation to the corporation as if the person holding, or performing the duties of, the office of Director were a director of the corporation for the purposes of that Act.
- (2) Section 21 of the *Commonwealth Authorities and Companies Act 1997* does not apply in relation to the Director.
- (3) To avoid doubt, the *Commonwealth Authorities and Companies Act 1997* applies to the Australian National Parks Fund as though the Fund were money of the Director.

**514V Extra matters to be included in annual report**

The annual report prepared by the Director under section 9 of the *Commonwealth Authorities and Companies Act 1997* must also include particulars of any directions given by the Minister under subsection 514D(1) of this Act during the year to which the report relates.

**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.

## **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. 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. 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.

## **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**

##### *Departmental annual reports*

- (1) The Secretary of a Department under the *Public Service Act 1922* must ensure that a report under section 25 of that Act complies with subsection (6).

##### *Parliamentary Department annual reports*

- (2) The relevant Presiding Officer in relation to a Parliamentary Department (as defined in section 9B of the *Public Service Act 1922*) must ensure that a report under that section complies with subsection (6).

Section 516A

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*Annual reports of Commonwealth authorities*

- (3) The directors of a Commonwealth authority (as defined in the *Commonwealth Authorities and Companies Act 1997*) must ensure that an annual report relating to the authority prepared under that Act complies with subsection (6).

*Annual reports of Commonwealth companies*

- (4) A Commonwealth company (as defined in the *Commonwealth Authorities and Companies Act 1997*) that is a Commonwealth agency must ensure that the documents given to the responsible Minister (as defined in that Act) under section 36 of that Act include a report complying with subsection (6).

*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 (3) or (4);
- must ensure that the annual report complies with subsection (6).

*Content of report*

- (6) A report described in subsection (1), (2), (3), (4) or (5) relating to a body or person (the *reporter*) for a period must:
- (a) include a report on how the actions 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 actions on the environment; and

Section 516A

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- (d) identify any measures the reporter is taking to minimise the impact of actions 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.

## **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.



## **Chapter 7—Miscellaneous**

### **Part 22—Miscellaneous**

#### **517 Determinations of species**

- (1) The Minister may, by instrument in writing, determine that a distinct population of biological entities is a species for the purposes of this Act.
- (2) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **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.

Section 519

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**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.

*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.
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Section 521

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- (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;
  - (j) CITES;
  - (k) the Framework Convention on Climate Change done at Rio de Janeiro on 5 June 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.
- (5) Subsection (3) does not limit subsection (1).

**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 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.

**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

Section 522A

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under this Act or an agreement made under this Act, are to be made out of money appropriated by the Parliament for the purpose.

**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.

**522B This Act does not apply to certain actions with prior approval**

- (1) This Act does not apply to an action that:
  - (a) consists of a use of land, sea or seabed; and
  - (b) was specifically authorised under a law of the Commonwealth, a State or a self-governing Territory before the commencement of this Act.
- (2) However, this Act does apply to an action described in subsection (1) if, immediately before the commencement of this Act, a further authorisation (however described) under a law of the Commonwealth, a State or a self-governing Territory was necessary to allow the action to be taken lawfully.

## **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).
- (2) However, a lawful continuation of a use of land, sea or seabed that was occurring immediately before the commencement of this Act is not an *action*. For this purpose, an enlargement, expansion or intensification of use is not a *continuation* of a use.

###### **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.

Section 524A

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- (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*.
- (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 1982*;
  - (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 *Petroleum (Submerged Lands) Act 1967*;
  - (g) the *Quarantine Act 1908*;
  - (h) the *Trade Practices Act 1974*.

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.

**524B Significant impact of actions**

In determining for the purposes of this Act whether an impact that an action has, will have or is likely to have is *significant*, the matters (if any) prescribed by the regulations must be taken into account.

## 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 (including land owned in Norfolk Island) and airspace over the land;
  - (b) an area of land held under lease by the Commonwealth or a Commonwealth agency (including an area held under lease in Norfolk Island) and airspace over the land;
  - (c) land in:
    - (i) an external Territory (except Norfolk Island); 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.

*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**:

**Chapter 8** Definitions

**Part 23** Definitions

**Division 1** Some definitions relating to particular topics

**Section 526**

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- (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
- (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 Law.

**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.



## **Division 2—General list of definitions**

### **528 Definitions**

In this Act, unless the contrary intention appears:

*accredited management plan* 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.

*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 or Norfolk Island—the Administrator of the Territory; or
  - (iv) a Minister of the State or Territory; otherwise than by or under a law of the Territory; 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 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

Section 528

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- (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 or Norfolk Island—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.

***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).

***Apia Convention*** means the Convention on Conservation of Nature in the South Pacific, done at Apia, Western Samoa, on 12 June 1976, as in force for Australia immediately before the commencement of this Act.

Note: The English text of the Convention is set out in Australian Treaty Series 1990 No. 41.

***article*** includes a substance or a mixture of substances.

***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 IUCN reserve management principles** has the meaning given by subsection 348(1).

**Australian jurisdiction** has the meaning given by subsection 5(5).

**Australian platform** has the meaning given by section 403.

**Australian Ramsar management principles** has the meaning given by section 335.

**Australian vessel** has the meaning given by subsection 5(5).

**Australian World Heritage management principles** has the meaning given by section 323.

**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 management plan** 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:

- (a) diversity within species and between species; and
- (b) diversity of ecosystems.

Section 528

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***Biodiversity Convention*** means the Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992, as in force for Australia immediately before the commencement of this Act.

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.

***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 in force for Australia immediately before the commencement of this Act.

Note: The English text of the Convention is set out in Australian Treaty Series 1991 No. 32.

***business day*** means a day that is not:

- (a) a Saturday or a Sunday; or
- (b) a public holiday or bank holiday in the place concerned.

***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 at Canberra on 20 October 1986, as in force for Australia immediately before the commencement of this Act.

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 part of such a member and any product derived from a 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 in force for Australia immediately before the commencement of this Act.

Note: The English text of the Convention is set out in Australian Treaty Series 1976 No. 29.

***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.

***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:
  - (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

Section 528

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- (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) an Aboriginal corporation within the meaning of the *Aboriginal Councils and Associations Act 1976*;
    - (iii) the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; or
  - (j) a company prescribed by the regulations for the purposes of this paragraph.

**Commonwealth aircraft** has the meaning given by section 403.

**Commonwealth area** has the meaning given by section 525.

**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.

***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 the continental shelf (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories).

***continuation*** of a use of land, sea or seabed has the meaning given by subsection 523(2).

***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.

***critical habitat*** for a listed threatened species or a listed threatened ecological community has the meaning given by subsection 207A(4).

***critically endangered***:

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Section 528

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- (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.

*cultural heritage* has the meaning given by subsection 12(4).

*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.

*declared Ramsar wetland* has the meaning given by section 17.

*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.

*ecological character* has the meaning given by subsection 16(3).

*ecological community* means 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.

**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) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b) or (c).

**environmental authority** has the meaning given by subsection 458(4).

**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**, for a warrant, means the person named in the warrant as being responsible for executing the warrant.

Section 528

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*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.

*foreign whaling vessel* has the meaning given by subsection 236(5).

*forestry operations* has the meaning given by subsection 40(2).

*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.

*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.

*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 to whom the approval applies.

***imported*** in relation to a cetacean or foreign whaling vessel means brought into the Australian jurisdiction.

***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.

***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 in force for Australia immediately before the commencement of this Act.

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).

Section 528

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**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).

**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.

**magistrate** means a magistrate who is remunerated by salary or otherwise.

**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*** of a listed threatened species, listed migratory species, listed marine species or listed threatened ecological community, includes, in the case of a species of animal or community of animals, the whole or part of the dead body of the member.

***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.

***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
- (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*.

***natural heritage*** has the meaning given by subsection 12(4).

***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.

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Section 528

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***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.

***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.

***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.

***principles of ecologically sustainable development*** has a meaning affected by section 3A.

**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 in force for Australia immediately before the commencement of this Act.

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.

**regional forest agreement** has the meaning given by subsection 38(2).

**relevant impacts** of an action has the meaning given by section 82.

**reprocessing** has the meaning given by subsection 22(1).

**RFA forestry operations** has the meaning given by subsection 38(2).

**RFA region** has the meaning given by section 41.

**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 to 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.

**self-governing Territory** means:

- (a) the Australian Capital Territory; or

Section 528

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- (b) the Northern Territory; or
- (c) Norfolk Island.

**significant**, in relation to the impact of an action, has a meaning affected by section 524B.

**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
- (d) 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.

Note: Determinations under paragraph (d) are disallowable instruments. See section 517.

**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.

**terms of reference** has the meaning given by paragraph 107(1)(b).

**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 cetacean or member of a listed threatened species, listed migratory species, listed marine species or threatened ecological community includes:

- (a) buy the cetacean or member, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or
- (b) sell the cetacean or 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
- (c) export the cetacean or member from Australia or an external Territory or import it into Australia or an external Territory; or
- (d) cause or allow any of the acts referred to in paragraph (a), (b) or (c) to be done.

**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).

**Uluru-Kata Tjuta National Park** has the meaning given by subsection 344(3).

**Uluru region** has the meaning given by subsection 386(2).

**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

Section 528

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(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.

*wetland* has the same meaning as in the Ramsar Convention.

*whale watching* has the meaning given by section 238.

*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 in force for Australia immediately before the commencement of this Act.

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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[*Minister's second reading speech made in—  
Senate on 12 November 1998  
House of Representatives on 29 June 1999*]

(133/98)

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