



# **Environmental Reform (Consequential Provisions) Act 1999**

**No. 92, 1999**

**An Act to repeal and amend Acts and make other provisions consequential on the enactment of the *Environment Protection and Biodiversity Conservation Act 1999*, to make technical amendments, and for related purposes**



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**No. 92, 1999**

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**An Act to repeal and amend Acts and make other provisions consequential on the enactment of the *Environment Protection and Biodiversity Conservation Act 1999*, to make technical amendments, and for related purposes**

[Assented to 16 July 1999]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Environmental Reform (Consequential Provisions) Act 1999*.

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## 2 Commencement

- (1) Subject to this section, this Act commences when the *Environment Protection and Biodiversity Conservation Act 1999* commences.
- (2) The amendments of the *Koongarra Project Area Act 1981* in Schedule 4 to this Act do not commence if section 3 of that Act commences before the *Environment Protection and Biodiversity Conservation Act 1999*.
- (3) The amendment of the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996* in Schedule 7 to this Act is taken to have commenced immediately after that Act received the Royal Assent.
- (4) The amendment of the *Wildlife Protection (Regulation of Exports and Imports) Amendment Act 1995* in Schedule 7 to this Act is taken to have commenced immediately after that Act received the Royal Assent.
- (5) Part 1 of Schedule 8 to this Act commences when Schedule 5 to the *Corporate Law Economic Reform Program Act 1999* commences if Schedule 5 to that Act has not commenced when the *Environment Protection and Biodiversity Conservation Act 1999* commences.
- (6) Part 2 of Schedule 8 to this Act commences when the *Public Service Act 1999* commences if that Act has not commenced when the *Environment Protection and Biodiversity Conservation Act 1999* commences.

## 3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



## **Schedule 1—Application of the new Act**

### **1 Definitions**

- (1) In this Schedule:

*action* has the meaning given by the new Act.

*Administrative Procedures* means the administrative procedures approved by the Governor-General by order under the EPIP Act.

*EPIP Act* means the *Environment Protection (Impact of Proposals) Act 1974*.

*EPIP activity* means an activity:

- (a) described in subsection 5(1) of the EPIP Act; and
- (b) proposed before the commencement of the new Act to be undertaken; and
- (c) for which a proponent was designated under the Administrative Procedures before the commencement of the new Act.

*finalised* has the meaning given by item 2.

*new Act* means the *Environment Protection and Biodiversity Conservation Act 1999*.

- (2) For the purposes of this Schedule, an action is *related to* an EPIP activity or a Commonwealth action (as defined in the Administrative Procedures) if the EPIP activity or Commonwealth action did, does, will or is likely to have the effect of permitting, causing, promoting or facilitating the action.

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

- (1) This item applies in relation to an environmental impact statement, public environment report or inquiry directed under the EPIP Act or the Administrative Procedures (regardless of whether the EPIP Act and Administrative Procedures apply of their own force or because of Part 2 of Schedule 3 to this Act).

- (2) An environmental impact statement is *finalised* when the final environmental impact statement is given to the Department responsible for the EPIP Act.
- (3) A public environment report is *finalised* when:
  - (a) a copy of all written comments (if any) received under the Administrative Procedures on the report has been given to the Department responsible for the EPIP Act, if the report is to be made available for public comment under the Administrative Procedures; or
  - (b) the report is given to the Minister or Department responsible for the EPIP Act, if the report is not to be made available for public comment under the Administrative Procedures.
- (4) An inquiry report is *finalised* when it is given to the Minister responsible for the EPIP Act.

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

#### *Actions that are EPIP activities*

- (1) Neither Part 3, nor Subdivision A of Division 4 of Part 11, of the new Act applies to an action that is an EPIP activity if, before the commencement of the new Act, all of the provisions of the Administrative Procedures (except those dealing with review of environmental aspects of proposed actions) relevant to the EPIP activity had been complied with.

Note: The EPIP Act and Administrative Procedures continue to apply to the EPIP activity. See Part 2 of Schedule 3 to this Act.

#### *Actions related to EPIP activities*

- (2) Neither Part 3, nor Subdivision A of Division 4 of Part 11, of the new Act applies to an action that is related to an EPIP activity if:
  - (a) before the commencement of the new Act, all of the provisions of the Administrative Procedures (except those dealing with review of environmental aspects of proposed actions) relevant to the EPIP activity had been complied with; and

- (b) in complying with those provisions, the certain and likely impacts of the action were taken into account.

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

##### *Actions that are EPIP activities*

- (1) Neither Part 3, nor Subdivision A of Division 4 of Part 11, of the new Act applies to an action that is an EPIP activity if, before the commencement of the new Act, the Minister administering the EPIP Act had:
  - (a) decided under the Administrative Procedures that an environmental impact statement or public environment report relating to the EPIP activity should be submitted; or
  - (b) directed under section 11 of the EPIP Act that an inquiry be conducted in respect of a matter including the EPIP activity.

Note: The EPIP Act and Administrative Procedures continue to apply to the EPIP activity. See Part 2 of Schedule 3 to this Act.

##### *Actions that are related to EPIP activities*

- (2) Neither Part 3, nor Subdivision A of Division 4 of Part 11, of the new Act applies to an action that is related to an EPIP activity if:
  - (a) before the commencement of the new Act, the Minister administering the EPIP Act had:
    - (i) decided under the Administrative Procedures that an environmental impact statement or public environment report relating to the EPIP activity should be submitted; or
    - (ii) directed under section 11 of the EPIP Act that an inquiry be conducted in respect of a matter including the EPIP activity; and
  - (b) the Minister administering Part 3 of the new Act has certified under item 6 that the impacts that the action has, will have or is likely to have on the environment have been, are being or will be assessed under the Administrative Procedures (as applying because of the EPIP Act or Part 2 of Schedule 3 to this Act).

*New Act may apply if assessment not finalised in 2 years*

- (3) Two years after the commencement of the new Act, this item ceases to apply to an action described in subitem (1) or (2) if the environmental impact statement, public environment report or inquiry report (as appropriate) has not been finalised before that time.

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

*No assessment needed under new Act if there is agreement*

- (1) Neither Part 3, nor Subdivision A of Division 4 of Part 11, of the new Act applies to an action that is an EPIP activity, or is related to an EPIP activity, if:
- (a) before the commencement of the new Act, no decision had been made under the Administrative Procedures as to whether an environmental impact statement or a public environment report was required in relation to the EPIP activity; and
  - (b) the Minister administering Part 3 of the new Act and the proponent of the EPIP activity designated under the Administrative Procedures agree in writing that the following should continue to apply in relation to the EPIP activity:
    - (i) the EPIP Act;
    - (ii) the Administrative Procedures;
    - (iii) the regulations made under the EPIP Act; and
  - (c) in the case of an action related to the EPIP activity—that Minister has certified under item 6 that the impacts that the action has, will have or is likely to have on the environment have been, are being or will be assessed under the Administrative Procedures (as applying because of the EPIP Act or Part 2 of Schedule 3 to this Act).

Note: The EPIP Act and Administrative Procedures continue to apply to the EPIP activity. See Part 2 of Schedule 3 to this Act.

*Consulting States and Territories before making agreement*

- (2) Before the Minister administering Part 3 of the new Act makes an agreement under subitem (1) affecting the application of that Part to an
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action that is to be taken in a State or self-governing Territory (as defined in the new Act), he or she must consult the appropriate Minister of the State or Territory about the proposal to make the agreement.

*Consultation about actions in State waters*

- (3) Subitem (2) applies to an action that is to be 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 to be taken in the State.

*Consultation about actions in Northern Territory waters*

- (4) Subitem (2) applies to an action to be 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 to be taken in the Territory.

*New Act may apply if assessment not finalised in 2 years*

- (5) Two years after the commencement of the new Act, this item ceases to apply to an action described in subitem (1) if, by that time:
- (a) an environmental impact statement relating to the EPIP activity is required under the Administrative Procedures and has not been finalised; or
  - (b) a public environment report relating to the EPIP activity is required under the Administrative Procedures and has not been finalised; or
  - (c) an inquiry has been directed under the EPIP Act in relation to the EPIP activity and the inquiry report has not been finalised.

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

- (1) For the purposes of items 4 and 5, the Minister administering Part 3 of the new Act may certify in writing that the impacts that a specified action has, will have or is likely to have on the environment have been, are being or will be assessed under the Administrative Procedures (as applying because of the EPIP Act or Part 2 of Schedule 3 to this Act).
- (2) That Minister may do so either of that Minister's own accord, or in response to a written request from a person.
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- (3) In deciding whether to certify, that Minister may consider only whether the impacts that a specified action has, will have or is likely to have on the environment have been, are being or will be assessed under the Administrative Procedures (as applying because of the EPIP Act or Part 2 of Schedule 3 to this Act).
- (4) A person may give that Minister a written request that that Minister certify in relation to a particular action. That Minister must decide whether to grant the request within 30 days of receiving it.
- (5) That Minister may, by instrument in writing, revoke a certificate relating to an action if:
  - (a) either:
    - (i) substantial new information relating to the action has become available since the certificate was made; or
    - (ii) a substantial change in circumstances has occurred that was not foreseen at the time the certificate was made; and
  - (b) because of the new information or change, that Minister is satisfied that an impact that the action has, will have or is likely to have on the environment has not been, is not being and will not be assessed under the Administrative Procedures (as applying because of the EPIP Act or Part 2 of Schedule 3 to this Act).

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

- (1) This item applies if, immediately before the commencement of the new Act, an exemption under the Administrative Procedures was in force so that neither an environmental impact statement, nor a public environment report nor an inquiry under the Procedures was required in relation to a Commonwealth action (as defined in the Procedures).
  - (2) For so long as no environmental impact statement, public environment report or inquiry under the Administrative Procedures would have been required in relation to the Commonwealth action because of the exemption (had the EPIP Act not been repealed), neither Part 3, nor Subdivision A of Division 4 of Part 11, of the new Act applies to:
    - (a) an action (as defined in the new Act) that is the Commonwealth action; or
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- (b) an action (as defined in the new Act) that:
    - (i) is related to the Commonwealth action; and
    - (ii) the Minister administering Part 3 of the new Act has certified under subitem (3) is related to the Commonwealth action.
- (3) The Minister administering Part 3 of the new Act may certify in writing that a specified action is related to the Commonwealth action if, and only if, he or she believes that, when the decision was made to grant the exemption, it was envisaged that the action, or actions in a class including the action, would be permitted, caused, promoted or facilitated by:
  - (a) the Commonwealth action; or
  - (b) a Commonwealth action in the class of Commonwealth actions to which the exemption related.
- (4) That Minister must not consider any other matters in deciding whether to certify.
- (5) That Minister may certify either of that Minister's own accord, or in response to a written request from a person.
- (6) A person may give that Minister a written request that that Minister certify in relation to a particular action. That Minister must decide whether to grant the request within 30 days of receiving it.

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

Part 3 of the new Act does not apply in relation to the negotiation and making of a regional forest agreement (as defined in that Act) for an area described in subsection 41(1) of that Act when it commenced if the negotiation and making of the agreement is an EPIP activity.

Note: The EPIP Act and Administrative Procedures continue to apply to the EPIP activity. See Part 2 of Schedule 3 to this Act.

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

Part 3 of the new Act does not apply to an installation to which clause 55 of Schedule 3 to the *Telecommunications Act 1997* applies.

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

Subdivision A of Division 1 of Part 3 of the new Act (about world heritage) does not apply to an act permitted by a consent given under section 9 or 10 of the *World Heritage Properties Conservation Act 1983* (whether the consent was given before the repeal of that Act or under that Act as it continues to apply because of Part 2 of Schedule 6 to this Act).

Note: The *World Heritage Properties Conservation Act 1983* continues to apply instead. See Part 2 of Schedule 6 to this Act.

**11 Parts 3 and 13 of the new Act do not apply to acts allowed by permit under Endangered Species Protection Act**

If a permit in force under the *Endangered Species Protection Act 1992* immediately before the commencement of the new Act allowed a person to do an act, Parts 3 and 13 of the new Act do not apply to the doing of the act by the person during the period for which the permit continues in force because of Part 2 of Schedule 2 to this Act.

**12 Parts 3 and 13 of the new Act do not apply to acts allowed by permit under the Whale Protection Act**

If a permit in force under the *Whale Protection Act 1980* immediately before the commencement of the new Act allowed a person to do an act, Parts 3 and 13 of the new Act do not apply to the doing of the act by the person during the period for which the permit continues in force because of Part 2 of Schedule 5 to this Act.

**13 Application of section 316 of the new Act**

To avoid doubt, section 316 of the new Act applies in relation to a property whether it was included in the World Heritage List before or after the commencement of that Act.

**14 Application of section 328 of the new Act**

To avoid doubt, section 328 of the new Act applies in relation to a wetland whether it was included in the List of Wetlands of International Importance kept under the Ramsar Convention before or after the commencement of that Act.



## **Schedule 2—Endangered Species Protection Act 1992: repeal etc.**

### **Part 1—Repeal**

#### *Endangered Species Protection Act 1992*

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

Repeal the Act.

## Part 2—Saving and transitional provisions

### 2 Definitions

In this Part:

*new Act* means the *Environment Protection and Biodiversity Conservation Act 1999*.

*Species Act* means the *Endangered Species Protection Act 1992*.

### 3 Listing of species, ecological communities and key threatening processes

#### *Application*

- (1) Subitems (2) and (3) apply if, immediately before the commencement of the new Act:
- (a) an item had been nominated by a person under section 25 of the Species Act for inclusion in a list in Schedule 1, 2 or 3 to that Act; and
  - (b) the Minister administering that Act had not:
    - (i) added the item to the list; or
    - (ii) decided not to add the item to the list.

#### *Nominated item to be dealt with under new Act*

- (2) The person is taken to have nominated the item under subsection 191(1) of the new Act, as shown in the following table.

<b>Purposes for which person is taken to have nominated item</b>		
<b>Item</b>	<b>Description of item nominated under Species Act</b>	<b>Purposes for which person is taken to have nominated item</b>
1	Species nominated for inclusion in the list in Part 1 of Schedule 1 to the Species Act	For inclusion in the category of the list mentioned in paragraph 178(1)(d) of the new Act
2	Species nominated for inclusion in the list in Part 2 of Schedule 1 to the Species Act	For inclusion in the category of the list mentioned in paragraph 178(1)(e) of the new Act

<b>Purposes for which person is taken to have nominated item</b>		
<b>Item</b>	<b>Description of item nominated under Species Act</b>	<b>Purposes for which person is taken to have nominated item</b>
3	Species nominated for inclusion in the list in Part 3 of Schedule 1 to the Species Act	For inclusion in the category of the list mentioned in paragraph 178(1)(a) of the new Act
4	Ecological community	For inclusion in the category of the list mentioned in paragraph 181(1)(b) of the new Act
5	Threatening process	For inclusion in the list mentioned in section 183 of the new Act

*Time limit for Scientific Committee to deal with nomination*

- (3) Subsection 189(4) of the new Act applies in relation to a nominated species or ecological community as if the Threatened Species Scientific Committee had received the nomination under section 191 of that Act from the Minister administering that Act on the later of the following days (or either of them if the days are the same):
- (a) the day the nomination was made under the Species Act;
  - (b) the day 6 months before the commencement of the new Act.

*Scientific Committee taken to have given advice under new Act*

- (4) If:
- (a) in performing its function under paragraph 159(1)(a) of the Species Act, the Endangered Species Scientific Subcommittee advised the Minister administering the Species Act to add an item to, or delete an item from, a list in a Schedule to that Act; and
  - (b) that Minister had not made a decision on the addition or deletion of the item before the commencement of the new Act;

the Threatened Species Scientific Committee is taken to give corresponding advice under section 189 of the new Act to the Minister administering the new Act on the day on which the relevant list mentioned in the third column of the table in subitem (5) is established.

*What is corresponding advice?*

- (5) The table shows what is *corresponding advice* taken to have been given by the Threatened Species Scientific Committee.

<b>Corresponding advice</b>		
<b>Item</b>	<b>Advice given by Endangered Species Scientific Subcommittee</b>	<b>Corresponding advice taken to be given by Threatened Species Scientific Committee</b>
1	To add a species to the list in Part 1 of Schedule 1 to the Species Act	To include the species in the category of the list mentioned in paragraph 178(1)(d) of the new Act
2	To delete a species from the list in Part 1 of Schedule 1 to the Species Act	To delete the species from the category of the list mentioned in paragraph 178(1)(d) of the new Act
3	To add a species to the list in Part 2 of Schedule 1 to the Species Act	To include the species in the category of the list mentioned in paragraph 178(1)(e) of the new Act
4	To delete a species from the list in Part 2 of Schedule 1 to the Species Act	To delete the species from the category of the list mentioned in paragraph 178(1)(e) of the new Act
5	To add a species to the list in Part 3 of Schedule 1 to the Species Act	To include the species in the category of the list mentioned in paragraph 178(1)(a) of the new Act
6	To delete a species from the list in Part 3 of Schedule 1 to the Species Act	To delete the species from the category of the list mentioned in paragraph 178(1)(a) of the new Act
7	To add an ecological community to the list in Schedule 2 to the Species Act	To include the ecological community in the category of the list mentioned in paragraph 181(1)(b) of the new Act

<b>Corresponding advice</b>		
<b>Item</b>	<b>Advice given by Endangered Species Scientific Subcommittee</b>	<b>Corresponding advice taken to be given by Threatened Species Scientific Committee</b>
8	To delete an ecological community from the list in Schedule 2 to the Species Act	To delete the ecological community from the category of the list mentioned in paragraph 181(1)(b) of the new Act
9	To add a threatening process to the list in Schedule 3 to the Species Act	To include the threatening process in the list mentioned in section 183 of the new Act
10	To delete a threatening process from the list in Schedule 3 to the Species Act	To delete the threatening process from the list mentioned in section 183 of the new Act

*Minister may ask Scientific Committee to review advice*

- (6) The Minister administering Division 1 of Part 13 of the new Act may request the Threatened Species Scientific Committee to review the Endangered Species Scientific Subcommittee's advice described in subitem (4), and report to that Minister on the review, within 3 months. If that Minister does so:
- (a) the Committee is not taken to have given corresponding advice as described in that subitem; and
  - (b) subsections 189(2) and (3) of the new Act apply in relation to the Committee as if that Minister had sought the Committee's advice under subsection 189(1) of that Act in relation to the matter that was the subject of the Subcommittee's advice; and
  - (c) subsections 189(5) and (6) of the new Act apply as if the Committee's report were advice to that Minister.

*Time limit for Minister to request review*

- (7) The Minister must not make a request for review of advice to add an item to, or delete an item from, a list more than 90 days after the day on which the relevant list mentioned in the third column of the table in subitem (5) is established.

*Relationship between subitems*

- (8) Subitem (6) has effect despite subitems (3) and (4).

**4 Continuation of recovery plans and threat abatement plans**

*Continuation of recovery plans*

- (1) A recovery plan or threat abatement plan that was approved or adopted under the Species Act and was in force under that Act immediately before the commencement of the new Act has effect for the purposes of the new Act as if the plan had been made or adopted under the new Act.

*Review of continued plans*

- (2) Subsection 279(2) of the new Act applies in relation to the plan as if the intervals were measured from the day the plan was adopted or approved under the Species Act.

*Continued plan need not deal with certain matters before review*

- (3) This item has effect in relation to a plan before the first review of the plan under section 279 of the new Act, even if the plan does not comply with subsection 270(2) or 271(2) (as appropriate) of the new Act.

**5 Continued preparation of recovery plans and threat abatement plans**

- (1) If, before the commencement of the new Act, the Director had complied with section 39 of the Species Act in relation to a draft plan and the Minister administering that Act had not approved the plan under that Act, the Minister administering the new Act need not comply with section 275 of the new Act before making a plan under Subdivision A of Division 5 of Part 13 of the new Act that is based on the draft plan.
- (2) The Minister administering the new Act may make the plan even if he or she has not received advice described in paragraph 274(1)(b) of the new Act.

**6 Conservation agreements**

For the purposes of the new Act, a conservation agreement made under the Species Act has effect as if:

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- (a) it had been made under the new Act; and
- (b) any reference in it to the Director (as defined in the Species Act) were a reference to the Minister administering the new Act.

## **7 Conservation orders**

### *Continuation of permanent and interim conservation orders*

- (1) For the purposes of the new Act, a permanent conservation order or interim conservation order in force under the Species Act immediately before the commencement of the new Act has effect as if it were a conservation order made under Division 13 of Part 17 of the new Act.

### *Expiry of interim conservation orders*

- (2) However, an interim conservation order does not have effect after the last day on which it could have had effect under the Species Act if the Species Act had not been repealed.

### *Reconsideration of permanent and interim conservation orders*

- (3) If, before the commencement of the new Act:
  - (a) the Minister administering the Species Act made a permanent conservation order or an interim conservation order under the Species Act; and
  - (b) a person applied to that Minister under the Species Act for reconsideration of the order or for reconsideration of a decision on review of the order; and
  - (c) that Minister had not confirmed, varied or revoked the order or decision;

that Minister must not confirm, vary or revoke the order or decision, despite section 8 of the *Acts Interpretation Act 1901*.

### *Minister's advice about conservation orders*

- (4) For the purposes of the new Act, advice given under Division 4 of Part 6 of the Species Act by the Minister administering the Species Act in relation to a permanent conservation order or an interim conservation order has effect as if it had been given under Division 13 of Part 17 of the new Act.

*Continuation of impact assessment conservation orders*

- (5) Despite the repeal of the Species Act, an impact assessment conservation order that was in force under the Species Act immediately before its repeal continues to have effect in relation to an action to which Part 3 of the new Act does not apply because of item 4, 5 or 8 of Schedule 1 to this Act as if the following provisions had not been repealed:
- (a) Division 3 of Part 5 of the Species Act;
  - (b) the other provisions of the Species Act, so far as they relate to impact assessment conservation orders.

*Modification of provisions of Species Act*

- (6) The provisions mentioned in paragraphs (5)(a) and (b) apply for the purposes of subitem (5) as if:
- (a) a reference in those provisions to the Director were a reference to the Secretary to the Department administering Division 13 of Part 17 of the new Act; and
  - (b) a reference in those provisions to the Minister were a reference to the Minister administering that Division; and
  - (c) a reference in those provisions to the *Environment Protection (Impact of Proposals) Act 1974* were a reference to that Act as it continues to apply because of Part 2 of Schedule 3 to this Act; and
  - (d) a reference in those provisions to the EPIP administrative procedures were a reference to the Administrative Procedures that apply because of Part 2 of Schedule 3 to this Act.

**8 Permits**

- (1) Despite the repeal of the Species Act:
- (a) a permit that was issued under that Act and was in force immediately before the repeal of that Act continues in force for the period for which it would have been in force if that Act had not been repealed; and
  - (b) that Act (as in force immediately before its repeal) continues to operate in relation to the permit and the action covered by the permit as if:



- (i) references in that Act to the Director were references to the Secretary to the Department administering Division 1 of Part 13 of the new Act; and
  - (ii) references in the Species Act to the Minister were a reference to the Minister administering that Division.
- (2) If, before the commencement of the new Act:
- (a) a person applied under the Species Act to the Minister administering that Act for reconsideration of a decision by the Director relating to a permit under the Species Act; and
  - (b) that Minister had not confirmed, varied or revoked the decision;
- that Minister must not confirm, vary or revoke the order or decision, despite subitem (1) and section 8 of the *Acts Interpretation Act 1901*.

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

- (1) This item extends subsection 43(1) of the *Administrative Appeals Tribunal Act 1975* for the purposes of an application made at any time to the Administrative Appeals Tribunal (in accordance with that Act) for review of a decision by the Minister administering the Species Act to give advice under Division 4 of Part 6 of the Species Act.

Note: Subsection 25(7) of the *Administrative Appeals Tribunal Act 1975* allows the President of the Administrative Appeals Tribunal to specify a person to take the place of the Minister administering the Species Act in proceedings after the repeal of the Species Act.

- (2) Without limiting subsection 43(1) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal may:
- (a) exercise the powers and discretions of the Minister administering the new Act for the purpose of varying the decision of the Minister administering the Species Act or substituting another decision for the decision of the Minister administering the Species Act; or
  - (b) remit the matter to the Minister administering the new Act for consideration in accordance with any directions or recommendations of the Tribunal.

## **10 Inventories and surveys**

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*Inventories of species and communities on land*

- (1) An inventory prepared under section 165 of the Species Act for an area has effect for the purposes of the new Act as if it had been prepared under section 172 of the new Act.

*Surveys of species in marine areas*

- (2) A survey prepared under section 166 of the Species Act for an area has effect for the purposes of the new Act as if it had been prepared under section 173 of the new Act.

*Certain obligations not affected*

- (3) This item does not affect the obligations under the new Act of the Minister administering that Act to prepare an inventory or survey of the following in an area:
- (a) listed threatened ecological communities (except communities included in the endangered category of the list mentioned in section 181 of the new Act);
  - (b) listed migratory species;
  - (c) listed marine species.

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

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

#### **11 Subsection 3(1) (definition of *ecological community*)**

Omit “*Endangered Species Protection Act 1992*”, substitute  
“*Environment Protection and Biodiversity Conservation Act 1999*”.

#### **12 Subsection 3(1) (definition of *species*)**

Omit “*Endangered Species Protection Act 1992*”, substitute  
“*Environment Protection and Biodiversity Conservation Act 1999*”.

#### **13 Saving**

The amendments of the *Great Barrier Reef Marine Park Act 1975* made by this Schedule do not affect the validity of a plan of management, agreement or arrangement made under Part VB of that Act.

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

#### **14 Clause 2 of Schedule 3 (definition of *ecological community*)**

Omit “*Endangered Species Protection Act 1992*”, substitute  
“*Environment Protection and Biodiversity Conservation Act 1999*”.

#### **15 Clause 2 of Schedule 3 (definition of *endangered ecological community*)**

Repeal the definition.

#### **16 Clause 2 of Schedule 3**

Insert:

***threatened ecological community*** means an ecological community that is included in the list of threatened ecological communities kept under Division 1 of Part 13 of the *Environment Protection and Biodiversity Conservation Act 1999*.

**17 Clause 2 of Schedule 3 (definition of *threatened species*)**

Repeal the definition, substitute:

*threatened species* means a species that is included in one of the following categories of the list of threatened species kept under Division 1 of Part 13 of the *Environment Protection and Biodiversity Conservation Act 1999*:

- (a) extinct in the wild;
- (b) critically endangered;
- (c) endangered;
- (d) vulnerable.

**18 Subparagraphs 27(7)(a)(vii), (viii) and (ix) of Schedule 3**

Omit “an endangered”, substitute “a threatened”.

**19 Application**

The amendment of clause 27 of Schedule 3 to the *Telecommunications Act 1997* made by this Part applies in relation to applications for facility installation permits made after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

**20 Subparagraphs 55(2)(a)(vii), (viii) and (ix) of Schedule 3**

Omit “an endangered”, substitute “a threatened”.

**21 Application**

The amendment of clause 55 of Schedule 3 to the *Telecommunications Act 1997* made by this Part applies in relation to installation that a carrier proposes to commence after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

## **Part 4—Refunds**

### **22 Refund of fees for applications for permits**

#### *Application of this item*

- (1) This item applies if, before the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*:
  - (a) a person had made an application for a permit under Division 2 of Part 6 of the *Endangered Species Protection Act 1992* accompanied by the prescribed fee; and
  - (b) the Director of National Parks and Wildlife had not decided whether to issue, or to refuse to issue, the permit.

#### *Applicant entitled to refund*

- (2) The Commonwealth must pay the person an amount equal to the prescribed fee.

#### *This item is not an appropriation*

- (3) To avoid doubt, this item does not appropriate money.

**Schedule 3—Environment Protection (Impact  
of Proposals) Act 1974: repeal etc.**

**Part 1—Repeal**

*Environment Protection (Impact of Proposals) Act 1974*

**1 The whole of the Act**

Repeal the Act.

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

### **2 Definitions**

In this Part:

*Administrative Procedures* means the administrative procedures approved by the Governor-General by order under the EPIP Act.

*EPIP Act* means the *Environment Protection (Impact of Proposals) Act 1974*.

*EPIP activity* means an activity:

- (a) described in subsection 5(1) of the EPIP Act; and
- (b) proposed before the commencement of the new Act to be undertaken; and
- (c) for which a proponent was designated under the Administrative Procedures before the commencement of the new Act.

*new Act* means the *Environment Protection and Biodiversity Conservation Act 1999*.

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

The EPIP Act, and all the instruments (including regulations and Administrative Procedures) made under it and in force immediately before the commencement of the new Act, continue to apply in relation to an EPIP activity described in item 3, 4, 5 or 8 of Schedule 1 to this Act, as if:

- (a) the EPIP Act had not been repealed; and
- (b) the EPIP Act were administered by the Minister administering Part 3 of the new Act.

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

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

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

Repeal the subsection.

### *Australian Heritage Commission Act 1975*

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

Repeal the definition.

#### **6 Subsection 22(2)**

Omit “or subsection 25(2)”.

#### **7 Subsection 22(4)**

Omit “or subsection 25(5)”.

#### **8 Subsection 23(1)**

Omit “and to section 25”.

#### **9 Subsection 23(4)**

Omit “or subsection 25(2)”.

#### **10 Subsection 24(3)**

Omit “or subsection 25(5)”.

#### **11 Section 25**

Repeal the section.

#### **12 At the end of paragraph 26(3)(a)**

Add “or”.

#### **13 Paragraphs 26(3)(b) and (c)**

Repeal the paragraphs, substitute:

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(b) the Commission has decided not to enter the place in the Register, after complying with subsection 23(3).

**14 Section 28**

Repeal the section.

**15 Section 29**

Repeal the section.

**16 Subsection 43(1)**

Repeal the subsection, substitute:

- (1) The annual report on the Commission under section 9 of the *Commonwealth Authorities and Companies Act 1997* must also include a description of the condition of the national estate at the end of the period to which the report relates.

**17 Application**

The amendment made by item 16 applies only to a report for a period that starts after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

**18 Section 44**

Repeal the section.

***Biological Control Act 1984***

**19 At the end of paragraph 19(1)(e)**

Add “or”.

**20 Paragraph 19(1)(g)**

Repeal the paragraph.

**21 Subsections 19(1A) and (2)**

Omit “, (f) or (g)”, substitute “or (f)”.

**22 At the end of paragraph 28(1)(e)**

Add “or”.

**23 Paragraph 28(1)(f)**

Omit “report; or”, substitute “report.”.

**24 Paragraph 28(1)(g)**

Repeal the paragraph.

**25 Subsections 28(1A), (2) and (3)**

Omit “, (f) or (g)” (wherever occurring), substitute “or (f)”.

**26 At the end of paragraph 33(1)(c)**

Add “or”.

**27 Paragraph 33(1)(d)**

Omit “report; or”, substitute “report.”.

**28 Paragraph 33(1)(e)**

Repeal the paragraph.

**29 Subsections 33(1A) and (2)**

Omit “, (d) or (e)”, substitute “or (d)”.

**30 At the end of paragraph 56(1)(a)**

Add “or”.

**31 Paragraph 56(1)(b)**

Omit “Part VII,”, substitute “Part VII or”.

**32 Paragraph 56(1)(b)**

Omit “, or a commission referred to in the *Environment Protection (Impact of Proposals) Act 1974*,”, substitute “; or”.

**33 At the end of paragraphs 56(1)(c) and (d)**

Add “or”.

**34 Paragraph 56(1)(e)**

Omit “, the Productivity Commission, or a commission referred to in the *Environment Protection (Impact of Proposals) Act 1974*,”; substitute “or the Productivity Commission; or”.

**35 At the end of paragraph 56(1)(f)**

Add “or”.

**36 Paragraph 56(1)(g)**

Omit “Part VII,”; substitute “Part VII or”.

**37 Paragraph 56(1)(g)**

Omit “, or a commission referred to in the *Environment Protection (Impact of Proposals) Act 1974*,”; substitute “; or”.

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

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

Repeal the subsections, substitute:

- (2) The Minister must either grant or refuse to grant the permit within 90 days after the application is made.
- (3) However, if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of the permit, the Minister must grant or refuse to grant the permit within whichever of the following periods ends later (or either of them if they end at the same time):
  - (a) 30 days after the day on which the Minister receives advice given under section 163 of that Act;
  - (b) 90 days after the application is made.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, certain persons must get advice from the Minister administering that Subdivision before authorising an action. Under section 163 of that Act, that Minister must give advice within 30 days after receiving a report of an environmental assessment of the action.

- (4) Despite Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, that
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Subdivision does not apply in relation to the granting of a permit described in subsection (5) or (5A) if the Minister is of the opinion described in that subsection.

**39 Paragraph 24(2)(a)**

Omit “directed to be held under section 11 of the *Environment Protection (Impact of Proposals) Act 1974*”, substitute “held under Part 8 of the *Environment Protection and Biodiversity Conservation Act 1999* (as it applies of its own force or because of Subdivision A of Division 4 of Part 11 of that Act)”.

**40 Application**

The amendments of the *Environment Protection (Sea Dumping) Act 1981* made by this Schedule apply in relation to applications for permits under that Act made after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

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

**41 Section 6**

Repeal the section.

**42 Section 11**

Omit “*Environment Protection (Impact of Proposals) Act 1974*”, substitute “*Environment Protection and Biodiversity Conservation Act 1999*”.

**43 Subsection 16(5)**

Repeal the subsection, substitute:

- (5) If, within the period specified in subsection (1) (or that period as extended under subsection (2) or (4)), the proposal to grant the Basel permit is referred under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, the Minister must either grant or refuse to grant the permit within 30 days after he or she receives advice under that Subdivision on the proposed grant.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

#### **44 Subsection 29(5)**

Repeal the subsection, substitute:

- (5) If, within the period specified in subsection (1) (or that period as extended under subsection (2) or (4)), the proposal to vary the Basel permit is referred under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, the Minister must decide whether to make the variation within 30 days after he or she receives advice under that Subdivision on the proposed variation.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

#### **45 Application**

The amendments of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* made by this Schedule apply in relation to applications for Basel permits, and for variations of Basel permits, made after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

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

#### **46 Subsection 31(4)**

Repeal the subsection.

#### **47 Section 42**

Repeal the section, substitute:

#### **42 Special provision regarding land in public park**

The Minister may not make a declaration under subsection 41(1) regarding an interest in land that consists of, or is in, a public park

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unless the Government of the State or Territory in which the land is situated has consented to the acquisition of the interest.

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

#### **48 Section 56**

Omit “*Environment Protection (Impact of Proposals) Act 1974*”, substitute “*Environment Protection and Biodiversity Conservation Act 1999*”.

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

#### **49 After subsection 20(5)**

Insert:

- (5A) However, if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of the permit, the Minister must grant or refuse to grant the permit within 30 days after the day on which the Minister receives advice given under that Subdivision on the proposed grant of the permit.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

#### **50 After subsection 26(4)**

Insert:

- (4A) However, if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the renewal of the permit, the Minister must renew or refuse to renew the permit within 30 days after the day on which the Minister receives advice given under that Subdivision on the proposed renewal of the permit.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on

environmental matters from the Minister administering that Subdivision.

### **51 After subsection 31(3)**

Insert:

- (3A) However, if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the variation of the permit, the Minister must decide whether to vary the permit within 30 days after the day on which the Minister receives advice given under that Subdivision on the proposed variation of the permit.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

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

Repeal the Division.

### **53 After subsection 41(5)**

Insert:

- (5A) However, if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of the exemption certificate, the Minister must grant or refuse to grant the certificate within 28 days after the day on which the Minister receives advice given under that Subdivision on the proposed grant of the certificate.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

### **54 Schedule**

Omit "*Environment Protection (Impact of Proposals) Act 1974*".

### **55 Application**

The amendments of the *Sea Installations Act 1987* made by this Schedule apply in relation to applications for grant, renewal or variation of permits and for grant of exemption certificates under that Act made after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

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

#### **56 Clause 2 of Schedule 3 (definition of *Environment Secretary*)**

Omit “the *Environment Protection (Impact of Proposals) Act 1974*”, substitute “the *Environment Protection and Biodiversity Conservation Act 1999*”.

#### **57 Subclause 28(1) of Schedule 3**

Repeal the subclause, substitute:

- (1) Chapters 2 and 4 and Divisions 1 to 4 (inclusive) of Part 13 of the *Environment Protection and Biodiversity Conservation Act 1999* do not apply to:
  - (a) the performance of a function, or the exercise of a power, conferred on the ACA by this Division; or
  - (b) an action (as defined in that Act) authorised by a facility installation permit.

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

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

Repeal the subsections, substitute:

- (2) The Minister must either grant or refuse to grant the permit within 90 days after the application is made.
  - (3) However, if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of the permit, the Minister must grant or refuse to grant the permit within 30 days after the day on
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which the Minister receives advice given under that Subdivision on the proposed grant.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

## **59 Application**

The amendment of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* made by this Schedule applies in relation to applications for permits (and, because of section 39 of that Act, to applications for authorities) under that Act made after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

**Schedule 4—National Parks and Wildlife  
Conservation Act 1975: repeal etc.**

**Part 1—Repeal**

*National Parks and Wildlife Conservation Act 1975*

**1 The whole of the Act**

Repeal the Act.

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

### **2 Definitions**

In this Part:

*Director* means the Director of National Parks and Wildlife established by the Parks Act.

*new Act* means the *Environment Protection and Biodiversity Conservation Act 1999*.

*Parks Act* means the *National Parks and Wildlife Conservation Act 1975*.

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

- (1) A Proclamation under Part II of the Parks Act of an area as a park or reserve that was in force immediately before the commencement of the new Act continues in force as if it had been made under section 344 of the new Act immediately after that commencement, so that the area is declared as a Commonwealth reserve under the new Act.
- (2) A Proclamation of an area as a park under the Parks Act continues in force as if it stated that the purposes for which the area was declared were:
  - (a) the preservation of the area in its natural condition; and
  - (b) the encouragement and regulation of the appropriate use, appreciation and enjoyment of the area by the public.
- (3) If, immediately before the commencement of the new Act, an area was proclaimed as a park or reserve under the Parks Act and was managed as a botanic garden (as defined in the Parks Act), the Proclamation of the area continues in force as if it included a statement that the purposes for which the area was declared included the object specified in paragraph 11(8)(ca) of the Parks Act.
- (4) This item does not prevent amendment of the Proclamation by another Proclamation made under Division 4 of Part 15 of the new Act.

- (5) To avoid doubt, paragraphs 357(1)(a) and (2)(a) of the new Act do not apply to a Commonwealth reserve to which this item relates until the reserve is assigned to an IUCN category by a Proclamation made under Division 4 of Part 15 of the new Act or a management plan made under that Division.
- (6) Paragraph 368(3)(a) of the new Act applies in relation to the preparation of a management plan for a Commonwealth reserve to which this item relates as if the reference in the paragraph to a report considered by the Minister under section 351 of that Act included a reference to a report considered by the Executive Council under subsection 7(11) of the Parks Act in relation to the park or reserve taken to have been declared as the Commonwealth reserve.

#### **4 Continuation of plans of management**

- (1) A plan of management in force for a park or reserve under Part II of the Parks Act immediately before the commencement of the new Act continues in force after that commencement as a management plan for the corresponding Commonwealth reserve as if:
  - (a) the Minister administering the new Act had approved it under section 370 of that Act; and
  - (b) it were not required to be laid before each House of the Parliament and were not able to be disallowed because of section 371 of the new Act.
- (2) However, the plan ceases to have effect on the earlier of the following days (or either of them if they are the same):
  - (a) the day it would have ceased to have had effect if the Parks Act had not been repealed;
  - (b) the day 7 years after the commencement of the new Act.
- (3) This item has effect in relation to a plan even if the plan does not comply with section 367 of the new Act.
- (4) This item does not prevent amendment of the plan by another management plan approved under Division 4 of Part 15 of the new Act.

#### **5 Continuation of preparation of plans**

- (1) If, before the commencement of the new Act:
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- (a) the Director published a notice under subsection 11(2A) of the Parks Act relating to a park or reserve that later became a Commonwealth reserve because of this Schedule; and
- (b) the Minister administering the Parks Act had not accepted under section 11 of the Parks Act a plan of management for the park or reserve submitted by the Director after the Director published the notice;

Division 4 (the *new Division*) of Part 15 of the new Act applies in relation to the preparation of a management plan for the Commonwealth reserve with the applicable modifications set out in this item.

- (2) The new Division applies as if paragraph 368(1)(a) and subsection 368(2) were omitted from the new Act.
- (3) If the Director published a notice under subsection 11(10) of the Parks Act after publishing the notice referred to in paragraph (1)(a) of this item, the new Division applies as if:
  - (a) paragraphs 368(1)(b) and (c) and subsection 368(5) were also omitted from the new Act; and
  - (b) if the date specified in the notice under paragraph 11(10)(b) of the Parks Act has passed—paragraph 368(1)(d) were also omitted from the new Act.
- (4) If subitem (3) does not apply, the new Division applies as if the reference in paragraph 368(1)(b) of the new Act to comments were a reference to representations received in response to the notice referred to in paragraph (1)(a) of this item.
- (5) If the Director submitted a plan of management for the park or reserve under subsection 11(12) of the Parks Act to the Minister administering that Act after publishing the notice referred to in paragraph (1)(a) of this item, the new Division applies as if:
  - (a) paragraphs 368(1)(d) and (e) were also omitted from the new Act; and
  - (b) the plan had been given to the Minister administering the new Division under subsection 370(1) of the new Act when it commenced and subsection 370(2) of the new Act had been complied with in relation to the plan.

- (6) If subitem (5) does not apply but subitem (3) does, the new Division applies as if the reference in paragraph 368(1)(e) of the new Act to comments were a reference to representations received in response to the notice under subsection 11(10) of the Parks Act.
- (7) Subitems (1) to (6) (inclusive) do not apply to the preparation of a management plan for a Commonwealth reserve after the first approval under the new Division of a management plan for the reserve.

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

- (1) This item effectively continues in existence each of the following Boards (the *old Boards*) that was established under Part IIA of the Parks Act and was in existence immediately before the commencement of the new Act:
    - (a) the Board for the park that was declared under Part II of the Parks Act and assigned the name Booderee National Park;
    - (b) the Board for so much of the reserve declared under Part II of the Parks Act and assigned the name Australian National Botanic Gardens as was in the Jervis Bay Territory;
    - (c) the Board for the park that was declared under Part II of the Parks Act and assigned the name Kakadu National Park;
    - (d) the Board for the park that was declared under Part II of the Parks Act and assigned the name Uluru-Kata Tjuta National Park.
  - (2) A section 14C notice (as defined in Part IIA of the Parks Act) that was in force immediately before the commencement of the new Act continues in force as if:
    - (a) it had been published in the *Gazette* under section 377 of the new Act immediately after that commencement; and
    - (b) it provided for an additional member of the Board, whose qualification for membership is nomination by the Northern Territory, in the case of a section 14C notice relating to Kakadu National Park or Uluru-Kata Tjuta National Park.
  - (3) The Minister administering Division 4 of Part 15 of the new Act must appoint under that Division a person as a member of the Board referred to in paragraph (2)(b) within 3 months of:
    - (a) the Northern Territory nominating the person; or
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(b) if the Northern Territory informs that Minister it believes that the members of the Board nominated by the traditional owners are unreasonably withholding consent to the appointment—that Minister referring the matter to the person holding the office of Commonwealth Ombudsman under the *Ombudsman Act 1976*.

- (4) This item does not prevent amendment of the notice under section 378 of the new Act.
- (5) For the purposes of the new Act, a person who was a member of an old Board immediately before the commencement of that Act holds office as a member of the Board established because of subitem (2).
- (6) The person holds office as a member of the Board for so much of the period specified in the instrument appointing him or her a member of the old Board as had not elapsed before the commencement of the new Act. This subitem has effect subject to sections 380 and 382 of that Act.

Note: Subsection 14F(2) of the Parks Act provided that certain instruments of appointment were taken to specify a 5 year period of appointment.

## **7 Continuation of town plans**

A town plan that was in force for the purposes of section 8C of the Parks Act immediately before the commencement of the new Act continues in force as a town plan for the purposes of the new Act.

## **8 Continuation of conservation zones**

A Proclamation under section 8A of the Parks Act declaring an area to be a conservation zone that was in force immediately before the commencement of the new Act continues in force as if it had been made under Division 5 of Part 15 of the new Act immediately after that commencement, so that:

- (a) the area; and
- (b) the subsoil and seabed (if any) specified in the Proclamation under the area; and
- (c) the waters under the sea (if any) in the area;

are declared as a conservation zone under the new Act.

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

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*Wardens and rangers*

- (1) An instrument appointing a person as a warden or ranger that was in force under section 37 of the Parks Act immediately before the commencement of the new Act continues in force for the purposes of the new Act as if it had been made under section 392 of the new Act (so the person is appointed as a warden or ranger (as appropriate) under section 392 of the new Act).

*Inspectors*

- (2) An instrument appointing a person as a wildlife inspector that was in force under section 38A of the Parks Act immediately before the commencement of the new Act continues in force for the purposes of the new Act as if it had been made under section 396 of the new Act (so the person is appointed as an inspector under section 396 of the new Act).

*Appointments terminated if appointee ceases to be officer of the Department*

- (3) A person appointed as a warden, ranger or inspector for the purposes of the new Act because of subitem (1) or (2) ceases to be a warden, ranger or inspector if he or she ceases to be an officer of, or an employee in, a Department administering a provision of the new Act.

*Persons covered by arrangements under section 36 of Parks Act*

- (4) If a person was appointed as a warden, ranger or inspector for the purposes of the new Act because of subitem (1) or (2) because he or she was an officer or employee referred to in section 36 of the Parks Act, he or she ceases to be a warden, ranger or inspector for the purposes of the new Act:
- (a) at the end of the period for which he or she was appointed under the Parks Act, if he or she was appointed for a specified period; or
  - (b) at the end of the period for which the relevant arrangement under section 36 of the Parks Act would have continued in force if that Act had not been repealed, if the arrangement was in force for a specified period; or



- (c) 6 months after the commencement of the new Act, if neither paragraph (a) nor paragraph (b) applies.

*Termination of appointments*

- (5) This item does not prevent the revocation of an instrument of appointment.

*Identity cards for wardens and rangers*

- (6) An identity card issued under section 39 of the Parks Act to a person who is appointed as a warden or ranger for the purposes of the new Act because of this item continues in force as if it had been issued to the person under section 395 of the new Act.

*Identity cards for inspectors*

- (7) An identity card issued under section 39 of the Parks Act to a person who is appointed as an inspector for the purposes of the new Act because of this item continues in force as if it had been issued to the person under section 399 of the new Act.

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

The repeal of the Parks Act does not affect any by-law that:

- (a) was made under section 52A of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; and
- (b) applied a regulation made under the Parks Act; and
- (c) was in force immediately before the commencement of the new Act.

**11 Transitional provision—approved wildlife programs**

- (1) In this item:

***approved management program*** means a program for the management of a species that was declared to be an approved management program by a declaration in force under regulation 58 of the National Parks and Wildlife Conservation Regulations immediately before the commencement of the new Act.

- (2) So far as a provision of the new Act listed in subitem (3) relates to the taking of an action:
- (a) relating to a species that is:
    - (i) a subject of an approved management program; and
    - (ii) either listed under the Division of that Act in which the provision occurs or, in the case of the provision of that Act listed in paragraph (3)(b), a cetacean species; and
  - (b) in a Territory where the program applies;
- the provision has effect as if a reference in the provision to the taking of an action not being inconsistent with a wildlife conservation plan for that species that is in force included a reference to the taking of an action not being inconsistent with the program for that species.
- (3) Subitem (2) applies in relation to the following provisions of the new Act:
- (a) subparagraph 216(3)(b)(ii);
  - (b) subparagraph 238(3)(b)(ii);
  - (c) subparagraph 258(3)(b)(ii).
- (4) When taking an action in a Territory where an approved management program applies, a Commonwealth agency (as defined in the new Act) must take all reasonable steps to act in accordance with the program.
- (5) This item does not apply in relation to an approved management program for a species after:
- (a) a recovery plan for the species has been made or adopted for the species under the new Act; or
  - (b) a wildlife conservation plan for the species has been made or adopted under section 285 of the new Act.

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

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

#### **12 Subsection 2(1)**

Insert:

***Booderee National Park*** means the Commonwealth reserve of that name within the Jervis Bay Territory under Division 4 of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Note 1: The heading to section 38A is altered by omitting “**Jervis Bay National Park**” and substituting “**Booderee National Park**”.

Note 2: The heading to section 38B is altered by omitting “**Jervis Bay National Park**” and substituting “**Booderee National Park**”.

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

Repeal the definition, substitute:

***Director*** has the meaning given by the *Environment Protection and Biodiversity Conservation Act 1999*.

Note: The Director is also an Authority.

#### **14 Subsection 2(1) (definition of *Jervis Bay National Park*)**

Repeal the definition.

#### **15 Subsection 9A(1)**

Omit “Jervis Bay National Park or the Jervis Bay Botanic Gardens”, substitute “Booderee National Park”.

Note: The heading to section 9A is altered by omitting “**Jervis Bay National Park etc.**” and substituting “**Booderee National Park**”.

#### **16 Saving**

To avoid doubt, the amendments of section 9A of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* by this Schedule do not affect the validity of a declaration made under that section before the amendments.

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**17 Subsections 38(2) and (4)**

Omit “Jervis Bay National Park or the Jervis Bay Botanic Gardens”,  
substitute “Booderee National Park or the Booderee Botanic Gardens”.

**18 Section 38A**

Omit “the *National Parks and Wildlife Conservation Act 1975*”,  
substitute “Division 4 of Part 15 of the *Environment Protection and  
Biodiversity Conservation Act 1999*”.

**19 Application**

The amendments of section 38A of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* made by this Schedule do not require the Council and the Director to enter into an agreement relating to land described in a notice published under subsection 9A(3) of that Act if the Council and the Director had made an agreement relating to that land under that section before the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

Note: Part 2 of this Schedule converts an agreement between the Council and the Director into an agreement between the Council and the Commonwealth.

**20 Section 38C**

Omit “Jervis Bay National Park or the Jervis Bay Botanic Gardens”,  
substitute “Booderee National Park”.

**21 Subsection 52A(3)**

Omit “*National Parks and Wildlife Conservation Act 1975*”, substitute  
“*Environment Protection and Biodiversity Conservation Act 1999*”.

**22 Saving of by-laws applying regulations**

A by-law that:

- (a) was made under section 52A of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* before the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (b) applied a regulation made under the *National Parks and Wildlife Conservation Act 1975*;

continues in force despite the amendment of subsection 52A(3) of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* by this Schedule.

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

#### **23 Subsection 3(1) (definition of *conservation zone*)**

Repeal the definition, substitute:

*conservation zone* has the meaning given by the *Environment Protection and Biodiversity Conservation Act 1999*.

#### **24 Subsection 3(1) (definition of *Director*)**

Repeal the definition, substitute:

*Director* has the meaning given by the *Environment Protection and Biodiversity Conservation Act 1999*.

#### **25 Subsection 3(1) (definition of *National Parks Act*)**

Repeal the definition.

#### **26 Subsection 3(1) (definition of *park*)**

Repeal the definition.

#### **27 Subsection 10(4)**

Repeal the subsection.

#### **28 Subsection 11(1A)**

Omit “park”, substitute “Commonwealth reserve under the *Environment Protection and Biodiversity Conservation Act 1999*”.

#### **29 Subsection 12(2A)**

Omit “park”, substitute “Commonwealth reserve under the *Environment Protection and Biodiversity Conservation Act 1999*”.

#### **30 Subsections 12(2B) and (2C)**

Omit “the *National Parks and Wildlife Conservation Act 1975*”, substitute “Division 4 of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*”.

**31 Saving**

To avoid doubt, the amendments of section 12 of the *Aboriginal Land Rights (Northern Territory) Act 1976* made by this Schedule does not affect an agreement mentioned in subsection 12(2B) or (2C) of that Act before the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

**32 Subsection 12A(1)**

Omit “the *National Parks and Wildlife Conservation Act 1975*”, substitute “Division 4 of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*”.

**33 Application provision**

Subsection 12A(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* as amended by this Schedule applies whether the estate or interest of the Director in the land ceased to exist before or after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

**34 Paragraph 12B(2)(b)**

Omit “*National Parks and Wildlife Conservation Act 1975*”, substitute “*Environment Protection and Biodiversity Conservation Act 1999*”.

**35 Subsection 50(1B)**

Omit “park”, substitute “Commonwealth reserve under the *Environment Protection and Biodiversity Conservation Act 1999*”.

**36 Subsection 73(1)**

Omit “the *National Parks and Wildlife Conservation Act 1975*”, substitute “Division 4 of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*”.

**37 Subsection 73(1)**

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Omit “under that Act”, substitute “under or for the purposes of that Division”.

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

#### **38 Subsection 7(2)**

Omit “the *National Parks and Wildlife Conservation Act 1975* (other than section 10)”, substitute “Division 4 of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*”.

#### **39 Subsection 7(3)**

Omit “under the *National Parks and Wildlife Conservation Act 1975*”, substitute “for the purposes of section 356 of the *Environment Protection and Biodiversity Conservation Act 1999*”.

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

#### **40 Section 8**

Omit all the words after “Parks” (first occurring), substitute “about any matter concerning the declaration or management of a Commonwealth reserve under the *Environment Protection and Biodiversity Conservation Act 1999*”.

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

#### **41 Subsection 3(1) (definition of *appointed member*)**

Omit “and Wildlife”.

#### **42 Subsection 3(1) (definition of *conservation zone*)**

After “means”, insert “an area that was”.

#### **43 Subsection 3(1)**

Insert:

***Director of National Parks*** means the person holding the appointment as the Director of National Parks under the *Environment Protection and Biodiversity Conservation Act 1999*.

**44 Subsection 3(1) (at the end of subparagraphs (b)(i) and (ii) of the definition of *prescribed instrument*)**

Add “and”.

**45 Subsection 3(1) (at the end of subparagraph (b)(iii) of the definition of *prescribed instrument*)**

Omit “or”, substitute “and”.

**46 Subsection 3(1) (subparagraph (b)(iv) of the definition of *prescribed instrument*)**

Repeal the subparagraph, substitute:

- (iv) an instrument giving the approval of the Governor-General under paragraph 355(1)(a) of the *Environment Protection and Biodiversity Conservation Act 1999*.

**47 Subsection 5A(2)**

Repeal the subsection, substitute:

- (2) However, the Supervising Scientist does not have the functions described in subsection (1) in relation to general mining operations in an area specified by the Minister in a direction under section 7 as an area in relation to which the Supervising Scientist does not have those functions.
- (3) Subsection (2) applies whether the Minister gave the direction before or after the commencement of this subsection.

**48 Paragraph 18(1)(b)**

Omit “and Wildlife”.

**49 Paragraph 18(1A)(b)**

Omit all the words after “Parks” (first occurring), substitute “or a person who is an agent or delegate of the Director of National Parks”.

**50 Subsections 21(3) and (6)**

Omit “and Wildlife”.

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**51 Paragraph 22C(4)(b)**

Omit all the words after “Parks” (first occurring), substitute “or a person who is an agent or delegate of the Director of National Parks”.

**52 Subsection 24A(2)**

Repeal the subsection, substitute:

- (2) However, the Institute does not have the functions described in subsection (1) in relation to general mining operations in an area specified in a direction given by the Minister as an area in relation to which the Institute does not have those functions.
- (3) Subsection (2) applies whether the Minister gave the direction before or after the commencement of this subsection.

**53 Paragraph 33(a)**

Omit “and Wildlife”.

Note: The heading to section 33 is altered by omitting “**and Wildlife**” (first occurring).

**54 Section 34**

Repeal the section, substitute:

**34 Supervising Scientist must comply with management plan etc.**

The Supervising Scientist must perform his or her functions and exercise his or her powers in relation to a Commonwealth reserve or township wholly or partly in the Alligator Rivers Region only in accordance with:

- (a) a management plan in operation for the reserve under Division 4 of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (b) a town plan in operation for the township under that Division.

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

**55 Section 3 (definition of *Director*)**

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Repeal the definition, substitute:

*Director* has the meaning given by the *Environment Protection and Biodiversity Conservation Act 1999*.

**56 Section 3 (at the end of subparagraphs (b)(i) and (ii) of the definition of *prescribed instrument*)**

Add “and”.

**57 Section 3 (at the end of subparagraph (b)(iii) of the definition of *prescribed instrument*)**

Omit “or”, substitute “and”.

**58 Section 3 (subparagraph (b)(iv) of the definition of *prescribed instrument*)**

Repeal the subparagraph, substitute:

- (iv) an instrument giving the approval of the Governor-General under paragraph 355(1)(a) of the *Environment Protection and Biodiversity Conservation Act 1999*.

**59 Subsection 4(3)**

Omit “the area of a park, reserve or conservation zone under the *National Parks and Wildlife Conservation Act 1975*”, substitute “a Commonwealth reserve or conservation zone under Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*”.

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

**60 Subsection 3(1) (definition of *Director*)**

Repeal the definition, substitute:

*Director* has the meaning given by the *Environment Protection and Biodiversity Conservation Act 1999*.

**61 Subsection 3(1) (definition of *National Parks Act*)**

Repeal the definition.

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**62 Subsection 3(1) (definition of *reserve*)**

Repeal the definition.

**63 Section 39**

Repeal the section, substitute:

**39 Great Barrier Reef not to be reserved under the *Environment Protection and Biodiversity Conservation Act 1999***

The Governor-General must not make a Proclamation under section 344 of the *Environment Protection and Biodiversity Conservation Act 1999* declaring an area in the Great Barrier Reef Region to be a Commonwealth reserve under that Act.

***Koongarra Project Area Act 1981***

**64 Subsection 3(1)**

Omit “by the Governor-General published in the *Gazette* on 5 April 1979 by which, pursuant to subsection 7(2) of the *National Parks and Wildlife Conservation Act 1975*, the Governor-General declared the area specified in the Schedule to the Proclamation to be a park and assigned to that park the name ‘Kakadu National Park’”, substitute:

that:

- (a) was made under subsection 7(2) of the *National Parks and Wildlife Conservation Act 1975*; and
- (b) was published in the *Gazette* on 5 April 1979; and
- (c) declared the area specified in the Schedule to the Proclamation to be a park and assigned to that park the name “Kakadu National Park”; and
- (d) was continued in force by Part 2 of Schedule 4 to the *Environmental Reform (Consequential Provisions) Act 1999* so as to declare the area to be a Commonwealth reserve under the *Environment Protection and Biodiversity Conservation Act 1999*;

**65 Subsection 3(2)**

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Omit “subsection 7(8) of the *National Parks and Wildlife Conservation Act 1975* and to have been made in accordance with the requirements of section 7 of that Act”, substitute “Division 4 of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999* and to have been made in accordance with that Division”.

**66 Subsections 3(3) and (4)**

Repeal the subsections, substitute:

- (3) The Commonwealth reserve declared by the Proclamation described in subsection (1) (as amended by that subsection) includes all parts of the area described in the Proclamation (as amended), and the Proclamation (as amended) is valid, even if a part of the area is not an area described in subsection 344(1) of the *Environment Protection and Biodiversity Conservation Act 1999*.

***Lands Acquisition Act 1989***

**67 Subsection 124(7) (definition of *conservation zone*)**

Repeal the definition.

**68 Subsection 124(7) (definition of *Gimbat* or *Goodparla*)**

Repeal the definition.

**69 Subsection 124(7) (definition of *Northern Territory pastoral lease area*)**

Repeal the definition.

**70 Subsection 124(7) (paragraph (b) of the definition of *relevant land*)**

Repeal the paragraph, substitute:

- (b) land in a Territory vested in an acquiring authority.

**71 Subsection 124(9)**

Omit “, other than land referred to in subparagraph (b)(ii) of the definition of *relevant land* in subsection (7)”.

**72 Transitional provision**

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The amendments of section 124 of the *Lands Acquisition Act 1989* made by this Schedule do not affect the validity of any regulations made for the purposes of that section before the commencement of the amendments.

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

#### **73 Paragraph 45(1)(b)**

Omit “and Wildlife”, substitute “(within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*)”.

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

#### **74 Subclause 28(3) of Schedule 3**

Repeal the subclause.

#### **75 Subclause 55(11) of Schedule 3**

Repeal the subclause, substitute:

- (11) The ACA must consult the Australian Heritage Commission before giving a direction under subclause (5) if the condition specified in paragraph (2)(c) is satisfied.

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

#### **76 Subsection 4(1) (definition of *Director*)**

Repeal the definition.

#### **77 Subsection 18(1)**

Repeal the subsection, substitute:

- (1) The Secretary to the Department is the Designated Authority until:
- (a) an appointment is made under subsection (2); or
  - (b) the Secretary resigns the office of Designated Authority under subsection (5).

#### **78 Saving**

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- (1) This item applies if a person appointed under subsection 18(2) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* (the **Wildlife Act**) held office as the Designated Authority immediately before the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.
- (2) The person continues to hold the office at the pleasure of the Minister administering the Wildlife Act, despite the repeal and substitution of subsection 18(1) of that Act by this Part.

**79 Paragraph 18(2)(d)**

Omit “the Director or”.

**80 Paragraph 76A(1)(a)**

Omit “Australian National Parks and Wildlife Service”, substitute “Department that deals with Chapter 5 of the *Environment Protection and Biodiversity Conservation Act 1999* and is administered by the Minister administering that Chapter”.

## **Schedule 5—Whale Protection Act 1980: repeal etc.**

### **Part 1—Repeal**

#### *Whale Protection Act 1980*

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

Repeal the Act.

## Part 2—Saving and transitional provisions

### 2 Definitions

In this Part:

*new Act* means the *Environment Protection and Biodiversity Conservation Act 1999*.

*Whale Act* means the *Whale Protection Act 1980*.

### 3 Continued operation of permits

- (1) Despite the repeal of the Whale Act:
  - (a) a permit that was issued under that Act and was in force immediately before the repeal of that Act continues in force for the period for which it would have been in force if that Act had not been repealed; and
  - (b) that Act, and instruments (including regulations and authorities) made under that Act, as in force immediately before the repeal of that Act, continue to operate in relation to the permit and the action covered by the permit as if references in that Act to the Minister were references to the Minister administering Division 3 of Part 13 of the new Act.
- (2) However, paragraph (1)(b) does not allow the transfer of the permit.

### 4 Continued appointment of inspectors

*Inspectors*

- (1) An instrument appointing a person as an inspector that was in force under section 21 of the Whale Act immediately before the commencement of the new Act continues in force for the purposes of the new Act as if it had been made under section 396 of the new Act (so the person is appointed as an inspector under section 396 of the new Act).



*Termination of appointments*

- (2) This item does not prevent the revocation of an instrument of appointment.

*Identity cards for inspectors*

- (3) An identity card issued under section 23 of the Whale Act to a person who is appointed as an inspector for the purposes of the new Act because of this item continues in force for the purposes of the new Act as if it had been issued to the person under section 399 of the new Act.

## Part 3—Consequential amendment of other Acts

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

#### 5 Section 12

Add at the end:

; or (e) the holder of the permit has been found by a court to have contravened a civil penalty provision (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*) in:

- (i) Division 1 of Part 3 of that Act; or
  - (ii) Subdivision A of Division 2 of Part 3 of that Act; or
  - (iii) Division 2 of Part 9 of that Act; or
- (f) the holder of the permit has been convicted of an offence against one or more of the following provisions of the *Environment Protection and Biodiversity Conservation Act 1999*:
- (i) Division 1 of Part 3;
  - (ii) Subdivision A of Division 2 of Part 3;
  - (iii) Division 2 of Part 9;
  - (iv) Part 13.

## **Part 4—Refunds**

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

#### *Application of this item*

- (1) This item applies if, before the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*:
  - (a) a person had paid the fee required by section 19 of the *Whale Protection Act 1980* for an application for the grant or transfer of a permit under the *Whale Protection Act 1980*; and
  - (b) the Minister administering that Act had not decided whether to grant, or to refuse to grant, the permit or transfer.

#### *Applicant entitled to refund*

- (2) The Commonwealth must pay the person an amount equal to the fee.

#### *This item is not an appropriation*

- (3) To avoid doubt, this item does not appropriate money.

**Schedule 6—World Heritage Properties  
Conservation Act 1983: repeal etc.**

**Part 1—Repeal**

*World Heritage Properties Conservation Act 1983*

**1 The whole of the Act**

Repeal the Act.

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

### **2 Definitions**

In this Part:

*new Act* means the *Environment Protection and Biodiversity Conservation Act 1999*.

*World Heritage Act* means the *World Heritage Properties Conservation Act 1983*.

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

#### *General rule*

- (1) The World Heritage Act, and all instruments (including regulations, Proclamations and consents) made under it and in force immediately before its repeal, continue to apply in relation to properties and sites that were declared by the Proclamations to be properties and sites to which sections of the Act apply, as if:
- (a) the Act had not been repealed; and
  - (b) the Act were administered by the Minister administering Subdivision A of Division 1 of Part 3 of the new Act.

Note: Part 3 of the new Act does not apply to acts covered by the consents. See Schedule 1 to this Act.

#### *Continued Proclamations and consents may be revoked*

- (2) Subitem (1) does not prevent:
- (a) the revocation of a Proclamation mentioned in that subitem; or
  - (b) the variation or revocation of a consent mentioned in that subitem.

Note: The power under the World Heritage Act to give a consent described in subitem (1) included a power to revoke or vary the consent, because of subsection 33(3) of the *Acts Interpretation Act 1901*.

*Limit on making new Proclamations and regulations*

- (3) Subitem (1) does not allow:
- (a) a Proclamation to be made under section 6, 7 or 8 of the World Heritage Act as it continues to apply because of that subitem; or
  - (b) regulations to be made for the purposes of section 9, 10 or 11 of the World Heritage Act as it continues to apply because of that subitem.

*New consents can be given*

- (4) To avoid doubt, this Schedule does not prevent the giving of a consent under section 9, 10 or 11 of the World Heritage Act as it continues to apply because of subitem (1).

**4 Continued appointment of inspectors**

*Inspectors*

- (1) An instrument appointing a person as an inspector that was in force under subsection 17A(1) of the World Heritage Act immediately before the commencement of the new Act continues in force for the purposes of the new Act as if it had also been made under section 396 of the new Act (so the person is appointed as an inspector under that section).

*Termination of appointments*

- (2) This item does not prevent the revocation of an instrument of appointment.

*Identity cards for inspectors*

- (3) An identity card issued under subsection 17A(7) of the World Heritage Act to a person who is appointed as an inspector for the purposes of the new Act because of this item continues in force as if it had been issued to the person under section 399 of the new Act.

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

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

#### **5 Subparagraph 27(7)(c)(i) of Schedule 3**

Repeal the subparagraph, substitute:

- (i) a declared World Heritage property (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);

#### **6 Application**

The amendment of clause 27 of Schedule 3 to the *Telecommunications Act 1997* made by this Schedule applies in relation to applications for facility installation permits made after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

#### **7 Subparagraph 55(2)(b)(i) of Schedule 3**

Repeal the subparagraph, substitute:

- (i) a declared World Heritage property (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);

#### **8 Application**

The amendment of clause 55 of Schedule 3 to the *Telecommunications Act 1997* made by this Schedule applies in relation to installation that a carrier proposes to commence after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

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

#### **9 Section 9**

Repeal the section, substitute:

**9 This Act does not affect the *Environment Protection and Biodiversity Conservation Act 1999***

This Act does not affect the operation of:

- (a) the *Environment Protection and Biodiversity Conservation Act 1999*; or
- (b) the *World Heritage Properties Conservation Act 1983*, so far as it continues to apply to parts of the Wet Tropics of Queensland World Heritage Area because of Part 2 of Schedule 6 to the *Environmental Reform (Consequential Provisions) Act 1999*.



## **Schedule 7—Other amendments**

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

#### **1 Subsection 2(1)**

Insert:

*Booderee Botanic Gardens* means the part of the Australian National Botanic Gardens in the Jervis Bay Territory.

#### **2 Subsection 2(1) (definition of *Jervis Bay Botanic Gardens*)**

Repeal the definition.

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

Repeal the subsection, substitute:

- (2) Before the Governor-General makes regulations for the purposes of section 49 in relation to a place that forms part of Aboriginal Land, the Minister must consider any representations made to the Minister by the Council or the executive committee in relation to public access to the place.

#### **4 Transitional—regulations**

- (1) Regulations described in subsection 53(2) of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* made under that Act and in force immediately before the commencement of this item have effect after that commencement as if they had been made under that section as amended by this Act.
- (2) Subitem (1) does not prevent the amendment of regulations described in that subitem.

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

#### **5 After subsection 94(6)**

Insert:

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- (6A) However, if the advice of the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* is sought under Subdivision A of Division 4 of Part 11 of that Act in relation to a draft plan, subsection (6) applies as if it referred to the day on which the advice was given, instead of the day the draft plan was received.

## **6 After subsection 95(3)**

Insert:

- (3A) However, if the advice of the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* is sought under Subdivision A of Division 4 of Part 11 of that Act in relation to a draft variation, subsection (3) applies as if it referred to the day on which the advice was given, instead of the day the draft variation was received.

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

### **7 Subsection 3(1)**

Insert:

*ecosystem* means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

### **8 Subsection 3(1) (definition of *environment*)**

Repeal the definition, substitute:

*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).

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

**9 Section 3**

Insert:

*ecosystem* means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

**10 Section 3 (definition of *environment*)**

Repeal the definition, substitute:

*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).

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

**11 Subsections 31(4) and (5)**

Repeal the subsections, substitute:

- (4) Before the Governor-General makes a Proclamation causing an area in the Great Barrier Reef Region to cease to be part of the Marine Park, the Minister must be satisfied:
    - (a) that the Proclamation, if made, would be in accordance with a resolution passed by each House of the Parliament on a motion; and
    - (b) that notice of the motion was given no less than 15 sitting days of that House before the motion was moved.
  - (5) Before the Governor-General makes a Proclamation, the Minister must consider a report by the Authority in relation to the matter dealt with by the Proclamation.
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## **12 Transitional—Proclamations**

A Proclamation made under section 31 of the *Great Barrier Reef Marine Park Act 1975* and in force immediately before the commencement of this item has effect after that commencement as if it had been made under that section as amended by this Act.

## **13 Paragraph 39Y(b)**

Repeal the paragraph, substitute:

- (b) to ensure management for the recovery and continued protection and conservation of species and ecological communities that are, or may become:
  - (i) extinct; or
  - (ii) extinct in the wild; or
  - (iii) critically endangered; or
  - (iv) endangered; or
  - (v) vulnerable; or
  - (vi) conservation dependent;

## **14 Saving**

The amendment of section 39Y of the *Great Barrier Reef Marine Park Act 1975* made by this Schedule does not affect the validity of a plan of management made under Part VB of that Act before the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

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

After “his”, insert “or her”.

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

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

Omit “; and”.

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

## **17 At the end of section 17**

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Add:

(3) If:

- (a) Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of a licence; and
- (b) the Minister has not granted the licence at the end of 30 days after he or she received advice under that Subdivision on the proposed grant;

he or she is taken for the purposes of section 66 to have refused the application for the licence on the last of those days.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

- (4) Subsections (1) and (2) do not apply in relation to an application for a licence if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of the licence.

## **18 Application**

The amendment of the *Ozone Protection Act 1989* made by this Schedule applies in relation to applications for licences under Part III of that Act made after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

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

### **19 Subsection 3(1)**

Insert:

*ecosystem* means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

### **20 Subsection 3(1) (definition of *environment*)**

Repeal the definition, substitute:

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*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).

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

#### **21 Clause 2 of Schedule 3**

Insert:

*ecosystem* means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

#### **22 Clause 2 of Schedule 3 (definition of *environment*)**

Repeal the definition, substitute:

*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).

#### **23 Subclause 17(4) of Schedule 3**

Repeal the subclause, substitute:

- (4) The notice must be given at least 10 business days before the carrier begins to engage in the activity.
- (4A) Despite subclause (4), the notice need be given only 2 business days before the carrier begins to engage in an activity authorised by Division 2 (which deals with inspection) that:

- (a) is not inconsistent with Australia's obligations under a listed international agreement; and
- (b) could not have an effect described in one or more of subparagraphs 27(7)(a)(ii) to (xii) (inclusive) of this Schedule; and
- (c) will not have an adverse effect on a streetscape or other landscape; and
- (d) will not have an impact on a place, area or thing described in paragraph 27(7)(c) or (d) of this Schedule.

## **24 Subclauses 17(7) and (8) of Schedule 3**

Repeal the subclauses, substitute:

- (7) Subclause (1) does not apply if the carrier intends to engage in an activity under Division 2 (which deals with inspection) in relation to land that is a public place and the activity:
  - (a) is not inconsistent with Australia's obligations under a listed international agreement; and
  - (b) could not have an effect described in one or more of subparagraphs 27(7)(a)(ii) to (xii) (inclusive) of this Schedule; and
  - (c) will not have an adverse effect on a streetscape or other landscape; and
  - (d) will not have an impact on a place, area or thing described in paragraph 27(7)(c) or (d) of this Schedule.

## **25 Application**

The amendments of clause 17 of Schedule 3 to the *Telecommunications Act 1997* made by this Schedule apply to activities that carriers intend to start at least 10 business days after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

## **26 At the end of paragraph 27(7)(a) of Schedule 3**

Add:

- or (x) could have an adverse effect on a listed migratory species (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*); or

- (xi) will have or is likely to have a significant impact on the environment in a Commonwealth marine area (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*); or
- (xii) will have or is likely to have a significant impact on the environment on Commonwealth land (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);

**27 After subparagraph 27(7)(c)(i) of Schedule 3**

Insert:

- (ia) a declared Ramsar wetland (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);

**28 Application**

The amendments of clause 27 of Schedule 3 to the *Telecommunications Act 1997* made by this Schedule apply in relation to applications for facility installation permits made after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

**29 At the end of paragraph 55(2)(a) of Schedule 3**

Add:

- or (x) could have an adverse effect on a listed migratory species (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*); or
- (xi) will have or is likely to have a significant impact on the environment in a Commonwealth marine area (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*); or
- (xii) will have or is likely to have a significant impact on the environment on Commonwealth land (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);

**30 After subparagraph 55(2)(b)(i) of Schedule 3**

Insert:

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- (ia) a declared Ramsar wetland (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);

### **31 Application**

The amendments of clause 55 of Schedule 3 to the *Telecommunications Act 1997* made by this Schedule apply in relation to installation that a carrier proposes to commence after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

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

### **32 Item 16 of Schedule 16**

After “or” (first occurring), insert “fail”.

## **Schedule 8—Amendments contingent on other Acts commencing**

### **Part 1—Amendments relating to Corporate Law Economic Reform Program Act 1999**

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

##### **1 Subsection 514U(2)**

Repeal the subsection, substitute:

- (2) Sections 27G, 27H, 27J and 27K of the *Commonwealth Authorities and Companies Act 1997* do not apply in relation to the Director.

### **Part 2—Amendments relating to Public Service Act 1999**

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

##### **2 Subsection 124(1)**

Omit “employed under the *Public Service Act 1922*”, substitute “engaged under the *Public Service Act 1999*”.

##### **3 Subsection 125(1)**

Omit “Subject to section 87E of the *Public Service Act 1922*, a”, substitute “A”.

##### **4 Subsection 514M(1)**

Omit “Subject to section 87E of the *Public Service Act 1922*, the”, substitute “The”.

##### **5 Subsections 516A(1) and (2)**

Repeal the subsections, substitute:

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*Agency annual reports*

- (1) The Head of an Agency (as defined in the *Public Service Act 1999*) must ensure that an annual report under that Act on the Agency's activities complies with subsection (6).

**6 Subsection 516A(6)**

Omit "(2),".

## Schedule 9—Miscellaneous

### 1 Regulation-making power

- (1) The Governor-General may make regulations prescribing matters:
  - (a) 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) In particular, the regulations may make transitional or saving provisions relating to either or both of the following:
  - (a) the enactment of the *Environment Protection and Biodiversity Conservation Act 1999*;
  - (b) the repeal of all or any of the Acts repealed by this Act.
- (3) Subitem (2) does not limit subitem (1).

### 2 Compensation for acquisition of property

#### *When compensation is necessary*

- (1) If, apart from this item, 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 item:

***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 of Australia 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.
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*[Minister's second reading speech made in—  
Senate on 10 December 1998  
House of Representatives on 29 June 1999]*

(237/98)

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