



# **Environment and Heritage Legislation Amendment Act (No. 1) 2006**

**No. 165, 2006**

**An Act to amend the *Environment Protection and  
Biodiversity Conservation Act 1999*, and for other  
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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No. 165, 2006

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**An Act to amend the *Environment Protection and  
Biodiversity Conservation Act 1999*, and for other  
purposes**

[Assented to 12 December 2006]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Environment and Heritage  
Legislation Amendment Act (No. 1) 2006*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 December 2006
2. Schedule 1, items 1 to 606	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	items 1–604, 606: 19 February 2007 ( <i>see</i> F2007L0411) item 605: 1 January 2007 ( <i>see</i> F2006L04046)
3. Schedule 1, item 607	At the end of the period of 5 years beginning on the day on which item 550 of Schedule 1 commences.	19 February 2012
4. Schedule 1, items 608 to 780	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	items 608–762, 764–780: 19 February 2007 ( <i>see</i> F2007L0411) item 763: 15 January 2007 ( <i>see</i> F2007L00129)

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 1, item 781	<p>Immediately after the <i>Heritage of Western Australia Act 1990</i> of Western Australia starts to apply in the Territory of Christmas Island.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day on which the <i>Heritage of Western Australia Act 1990</i> of Western Australia starts to apply in the Territory of Christmas Island. The notice is not a legislative instrument.</p>	1 July 2022
6. Schedule 1, item 782	<p>Immediately after the <i>Heritage of Western Australia Act 1990</i> of Western Australia starts to apply in the Territory of Cocos (Keeling) Islands.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day on which the <i>Heritage of Western Australia Act 1990</i> of Western Australia starts to apply in the Territory of Cocos (Keeling) Islands. The notice is not a legislative instrument.</p>	
7. Schedule 1, items 783 to 807	<p>A day or days to be fixed by Proclamation.</p> <p>However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</p>	<p>19 February 2007</p> <p>(see F2007L0411)</p>
8. Schedule 1, item 808	<p>At the end of the period of 5 years beginning on the day on which item 550 of Schedule 1 commences.</p>	19 February 2012
9. Schedule 1, items 809 to 835	<p>A day or days to be fixed by Proclamation.</p> <p>However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</p>	<p>19 February 2007</p> <p>(see F2007L0411)</p>

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
10. Schedule 1 item 836	At the end of the period of 5 years beginning on the day on which item 550 of Schedule 1 commences.	19 February 2012
11. Schedule 1, item 837	A day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 January 2007 (see F2006L04046)
12. Schedule 1 item 838	At the end of the period of 5 years beginning on the day on which item 550 of Schedule 1 commences.	19 February 2012
13. Schedule 1, items 839 and 840	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	item 839: 1 January 2007 (see F2006L04046) item 840: 19 February 2007 (see F2007L0411)
14. Schedule 1, items 841 to 845	At the end of the period of 5 years beginning on the day on which item 550 of Schedule 1 commences.	19 February 2012
15. Schedule 1, items 846 to 869	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	items 846–851, 854–869: 19 February 2007 (see F2007L0411) items 852, 853: 1 January 2007 (see F2006L04046)
16. Schedule 2	The day on which this Act receives the Royal Assent.	12 December 2006
Note:	This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.	



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- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

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—Amendment of Acts

### Part 1—Amendment of the Environment Protection and Biodiversity Conservation Act 1999

#### 1 After section 5

Insert:

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

- (1) This section applies if:
- (a) under the *Fisheries Management Act 1991*, a plan of management in force under that Act applies to particular fishing activities in a particular area of water; and
  - (b) the area of water is not within, or is not wholly within:
    - (i) the Australian jurisdiction; or
    - (ii) a Commonwealth area; or
    - (iii) a Commonwealth marine area; and
  - (c) the area of water is not:
    - (i) an area of water, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; or
    - (ii) an area of water within the limits of a State or the Northern Territory.
- (2) If, apart from this subsection, a provision of this Act would, or would not, apply in relation to the fishing activities (or in relation to fish or other things taken in the course of the activities) because the area of water mentioned in subsection (1) is not within, or is not wholly within:
- (a) the Australian jurisdiction; or
  - (b) a Commonwealth area; or
  - (c) a Commonwealth marine area;

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

- (d) the Australian jurisdiction; or
- (e) a Commonwealth area; or
- (f) a Commonwealth marine area;

as the case requires.

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

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

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

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

(3) In this section:

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

## 2 Section 7

After “*Criminal Code*”, insert “(except Part 2.5)”.

## 3 At the end of section 7

Add:

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

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

## 4 Paragraph 15A(1)(b)

Repeal the paragraph, substitute:

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

**5 After subsection 15A(1)**

Insert:

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

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

**6 Paragraph 15A(2)(b)**

Repeal the paragraph, substitute:

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

**7 After subsection 15A(2)**

Insert:

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

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

**8 At the end of subsection 15A(3)**

Add:

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

**9 Subsection 15B(7)**

Repeal the subsection.

**10 Subsection 15B(8)**

Omit “and (7)”.

**11 Paragraph 15C(1)(b)**

Repeal the paragraph, substitute:

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

- (c) the heritage values are National Heritage values of the place;  
and
- (d) the place is a National Heritage place.

## **12 After subsection 15C(1)**

Insert:

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

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

## **13 Paragraphs 15C(2)(b) and (c)**

Repeal the paragraphs, substitute:

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

## **14 After subsection 15C(2)**

Insert:

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

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

## **15 Paragraph 15C(3)(c)**

Repeal the paragraph, substitute:

- (c) the action results or will result in a significant impact on the heritage values of a place; and
- (d) the heritage values are National Heritage values of the place;  
and
- (e) the place is a National Heritage place.

## **16 After subsection 15C(3)**

Insert:

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

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

## **17 Paragraphs 15C(4)(c) and (d)**

Repeal the paragraphs, substitute:

- (c) the action is likely to have a significant impact on the heritage values of a place; and
- (d) the heritage values are National Heritage values of the place; and
- (e) the place is a National Heritage place.

**18 After subsection 15C(4)**

Insert:

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

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

**19 Paragraph 15C(5)(c)**

Repeal the paragraph, substitute:

- (c) the action results or will result in a significant impact on the heritage values of a place; and
- (d) the heritage values are National Heritage values of the place; and
- (e) the place is a National Heritage place.

**20 After subsection 15C(5)**

Insert:

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

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

**21 Paragraphs 15C(6)(c) and (d)**

Repeal the paragraphs, substitute:

- (c) the action is likely to have a significant impact on the heritage values of a place; and
- (d) the heritage values are National Heritage values of the place; and
- (e) the place is a National Heritage place.

**22 After subsection 15C(6)**

Insert:

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

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

### **23 Paragraph 15C(7)(b)**

Repeal the paragraph, substitute:

- (b) the action results or will result in a significant impact on the heritage values, to the extent that they are indigenous heritage values, of a place; and
- (c) the heritage values are National Heritage values of the place; and
- (d) the place is a National Heritage place.

### **24 After subsection 15C(7)**

Insert:

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

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

### **25 Paragraphs 15C(8)(b) and (c)**

Repeal the paragraphs, substitute:

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

### **26 After subsection 15C(8)**

Insert:

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

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

### **27 Paragraph 15C(9)(b)**

Repeal the paragraph, substitute:

- (b) the action results or will result in a significant impact on the heritage values of a place; and
- (ba) the heritage values are National Heritage values of the place; and
- (bb) the place is a National Heritage place; and

**28 After subsection 15C(9)**

Insert:

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

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

**29 Paragraph 15C(10)(b)**

Repeal the paragraph, substitute:

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

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

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

**30 Paragraph 15C(10)(c)**

Omit “Convention; and”, substitute “Convention.”.

**31 Paragraph 15C(10)(d)**

Repeal the paragraph.

**32 After subsection 15C(10)**

Insert:

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

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

**33 Subsections 15C(11) and (12)**

Repeal the subsections.

**34 Subsection 15C(13)**

Omit “(12)”, substitute “(10)”.

**35 At the end of subsection 15C(13)**

Add:

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

**36 Subsection 15C(15)**

Repeal the subsection.

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**37 Subsection 15C(16)**

Omit “(12)”, substitute “(10)”.

**38 Paragraph 17B(1)(b)**

Repeal the paragraph, substitute:

- (b) the action results or will result in a significant impact on the ecological character of a wetland; and
- (c) the wetland is a declared Ramsar wetland.

**39 After subsection 17B(1)**

Insert:

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

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

**40 Paragraph 17B(2)(b)**

Repeal the paragraph, substitute:

- (b) the action is likely to have a significant impact on the ecological character of a wetland; and
- (c) the wetland is a declared Ramsar wetland.

**41 After subsection 17B(2)**

Insert:

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

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

**42 At the end of subsection 17B(3)**

Add:

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

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

Repeal the paragraph, substitute:

- (b) the action results or will result in a significant impact on:
  - (i) a species; or
  - (ii) an ecological community; and
- (c) the species is a listed threatened species, or the community is a listed threatened ecological community.

**44 After subsection 18A(1)**

Insert:

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

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

**45 Paragraph 18A(2)(b)**

Repeal the paragraph, substitute:

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

(i) a species; or

(ii) an ecological community; and

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

**46 After subsection 18A(2)**

Insert:

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

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

**47 At the end of subsection 18A(3)**

Add:

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

**48 At the end of section 19**

Add:

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

**49 Paragraph 20A(1)(b)**

Repeal the paragraph, substitute:

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

(c) the species is a listed migratory species.

**50 After subsection 20A(1)**

Insert:

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

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

**51 Paragraph 20A(2)(b)**

Repeal the paragraph, substitute:

- (b) the action is likely to have a significant impact on a species;  
and
- (c) the species is a listed migratory species.

**52 After subsection 20A(2)**

Insert:

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

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

**53 At the end of subsection 20A(3)**

Add:

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

**54 At the end of Subdivision D of Division 1 of Part 3**

Add:

**20B Certain actions relating to listed migratory species not prohibited**

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

**55 At the end of subsection 22A(7)**

Add:

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

**56 At the end of section 24**

Add:

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

**57 After subsection 24A(1)**

Insert:

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

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

**58 Paragraph 24A(2)(c)**

Omit “and the person is reckless as to that fact”.

**59 After subsection 24A(2)**

Insert:

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

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

**60 Paragraph 24A(3)(c)**

Repeal the paragraph, substitute:

- (c) the action results or will result in a significant impact on the environment in an area; and
- (d) the area is a Commonwealth marine area.

**61 After subsection 24A(3)**

Insert:

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

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

**62 Paragraph 24A(4)(c)**

Repeal the paragraph, substitute:

- (c) the action is likely to have a significant impact on the environment in an area; and
- (d) the area is a Commonwealth marine area.

**63 After subsection 24A(4)**

Insert:

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

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

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**64 After subsection 24A(5)**

Insert:

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

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

**65 Paragraph 24A(6)(c)**

Omit “and the person is reckless as to that fact”.

**66 After subsection 24A(6)**

Insert:

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

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

**67 At the end of subsection 24A(7)**

Add:

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

**68 After Subdivision H of Division 1 of Part 3**

Insert:

**Subdivision HA—Limitation on liability for actions of third parties**

**25AA Limitation on liability for actions of third parties**

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

*Defence to offences*

- (2) For the purposes of subsection (1), the following provisions do not apply to the primary action:
- (a) subsections 15A(1) and (2);
  - (b) subsections 15C(1) to (10);
  - (c) subsections 17B(1) and (2);
  - (d) subsections 18A(1) and (2);
  - (e) subsections 20A(1) and (2);
  - (f) subsections 22A(1) to (6);
  - (g) subsections 24A(1) to (6).

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

*Exception to civil penalties*

- (3) For the purposes of subsection (1), the following provisions do not apply to the primary action:
- (a) subsection 12(1);
  - (b) subsections 15B(1) to (5) and (7);
  - (c) subsection 16(1);
  - (d) subsections 18(1) to (6);
  - (e) subsection 20(1);
  - (f) subsections 21(1) to (3);
  - (g) subsections 23(1) to (3);
  - (h) subsection 25(1).

**69 Subsection 25B(3)**

After “475”, insert “, 480A, 480K”.

**70 Subsection 25D(1)**

After “475”, insert “, 480A, 480K”.

**71 After subsection 27A(1)**

Insert:

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

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

**72 Paragraph 27A(2)(c)**

Omit “and the person is reckless as to that fact”.

**73 After subsection 27A(2)**

Insert:

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

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

**74 Paragraph 27A(3)(c)**

Repeal the paragraph, substitute:

- (c) the action results or will result in a significant impact on the environment in an area; and
- (d) the area is Commonwealth land.

**75 After subsection 27A(3)**

Insert:

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

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

**76 Paragraph 27A(4)(c)**

Repeal the paragraph, substitute:

- (c) the action is likely to have a significant impact on the environment in an area; and
- (d) the area is Commonwealth land.

**77 After subsection 27A(4)**

Insert:

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

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

**78 At the end of subsection 27A(5)**

Add:

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

**79 Paragraph 27C(1)(c)**

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Repeal the paragraph, substitute:

- (c) the action results or will result in a significant impact on the environment in a place; and
- (ca) the place is a Commonwealth Heritage place; and

### **80 After subsection 27C(1)**

Insert:

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

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

### **81 Paragraphs 27C(2)(c) and (d)**

Repeal the paragraphs, substitute:

- (c) the action is likely to have a significant impact on the environment in a place; and
- (d) the place is a Commonwealth Heritage place; and

### **82 After subsection 27C(2)**

Insert:

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

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

### **83 Subsection 28(5)**

Repeal the subsection, substitute:

- (5) The Minister may make a declaration under subsection (4) relating to a Commonwealth agency's actions only if he or she is satisfied that:
  - (a) in taking the actions to which the declaration relates, the agency must comply with the law of a State or Territory (including a law of a State that is applied to a Commonwealth place by virtue of the *Commonwealth Places (Application of Laws) Act 1970*), that has either or both of the following objects (whether express or implied):
    - (i) to protect the environment;
    - (ii) to promote the conservation and ecologically sustainable use of natural resources; and



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

#### **84 At the end of Division 2 of Part 3**

Add:

#### **Subdivision D—Limitation on liability for actions of third parties**

##### **28AB Limitation on liability for actions of third parties**

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

##### *Defence to offences*

- (2) For the purposes of subsection (1), the following provisions do not apply to the primary action:
  - (a) subsections 27A(1) to (4);
  - (b) subsections 27C(1) and (2).

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

##### *Exception to civil penalties*

- (3) For the purposes of subsection (1), the following provisions do not apply to the primary action:
  - (a) subsections 26(1) and (2);
  - (b) subsection 27B(1);
  - (c) subsection 28(1).

#### **85 Division 3 of Part 3**

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Repeal the Division.

**86 Paragraph 29(1)(b)**

Omit “management plan that is a bilaterally accredited management plan”, substitute “management arrangement or authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process”.

**87 Paragraph 29(1)(d)**

Repeal the paragraph, substitute:

- (d) either of the following applies:
  - (i) in the case of a bilaterally accredited management arrangement—the management arrangement is in force under a law of the State or Territory identified in or under the bilateral agreement;
  - (ii) in the case of a bilaterally accredited authorisation process—the authorisation process is set out in a law of the State or Territory, and the law and the authorisation process are identified in or under the bilateral agreement; and

**88 Paragraph 29(1)(e)**

Omit “management plan”, substitute “management arrangement or bilaterally accredited authorisation process”.

**89 Paragraph 31(c)**

Omit “management plan”, substitute “management arrangement or a bilaterally accredited authorisation process”.

**90 Paragraph 31(f)**

Repeal the paragraph, substitute:

- (f) either of the following applies:
  - (i) in the case of a bilaterally accredited management arrangement—the management arrangement is in force under a law of the State or self-governing Territory identified in or under the bilateral agreement;
  - (ii) in the case of a bilaterally accredited authorisation process—the authorisation process is set out in a law of the State or self-governing Territory, and the law and

the authorisation process are identified in or under the  
bilateral agreement; and

**91 Paragraph 31(g)**

Omit “management plan”, substitute “management arrangement or bilaterally accredited authorisation process”.

**92 Division 2 of Part 4 (heading)**

Repeal the heading, substitute:

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

**93 Paragraph 32(a)**

Omit “management plan”, substitute “management arrangement or an accredited authorisation process”.

**94 Paragraph 32(c)**

Repeal the paragraph, substitute:

- (c) one of the following applies:
  - (i) in the case of an accredited management arrangement—the management arrangement is in operation under a law of the Commonwealth identified in or under the declaration;
  - (ii) in the case of an accredited authorisation process—the authorisation process is set out in a law of the Commonwealth, and the law and the authorisation process are identified in or under the declaration; and

**95 Paragraph 32(d)**

Omit “management plan”, substitute “management arrangement or accredited authorisation process”.

**96 Subsection 33(1)**

Omit “a management plan that is an accredited management plan”, substitute “a management arrangement or authorisation process that is an accredited management arrangement or an accredited authorisation process”.

### 97 Subsection 33(2)

Repeal the subsection, substitute:

*What is an accredited management arrangement?*

- (2) A management arrangement is an **accredited management arrangement** for the purposes of a declaration that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if:
- (a) the management arrangement is in operation under a law of the Commonwealth identified in or under the declaration; and
  - (b) the management arrangement has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

*What is an accredited authorisation process?*

- (2A) An authorisation process is an **accredited authorisation process** for the purposes of a declaration that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if:
- (a) the authorisation process is set out in a law of the Commonwealth, and the law and the authorisation process are identified in or under the declaration; and
  - (b) the authorisation process has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

### 98 Subsection 33(3)

Omit “, the Minister may accredit by written instrument a management plan”, substitute “or (2A), the Minister may accredit by written instrument a management arrangement or authorisation process”.

Note: The heading to subsection 33(3) is altered by omitting “*management plan*” and substituting “*management arrangement or authorisation process*”.

### 99 Paragraph 33(3)(a)

Repeal the paragraph, substitute:

- (a) the management arrangement or authorisation process and the law under which it is in operation, or in which it is set out, meet the criteria prescribed by the regulations; and
-

**100 Paragraph 33(3)(b)**

Omit “plan”, substitute “management arrangement or authorisation process”.

**101 Paragraph 33(3)(c)**

Omit “management plan”, substitute “management arrangement or authorisation process”.

**102 Subsection 33(3)**

Omit “management plan” (last occurring), substitute “management arrangement or authorisation process”.

**103 Subsection 33(3) (note)**

Omit “plan”, substitute “management arrangement or authorisation process”.

**104 Subsection 33(4)**

Repeal the subsection, substitute:

*Tabling of management arrangement or authorisation process  
before accreditation*

- (4) The Minister must cause to be laid before each House of the Parliament:
- (a) a copy of:
    - (i) in the case of a management arrangement—the management arrangement; or
    - (ii) in the case of an authorisation process—the relevant part of the law in which the authorisation process is set out;that the Minister is considering accrediting for the purposes of subsection (2) or (2A); and
  - (b) a notice that the Minister proposes to accredit the management arrangement or authorisation process for the purposes of a declaration under this section.

**105 Subsection 33(5)**

Omit “management plan”, substitute “management arrangement or authorisation process”.

**106 Subsection 33(5)**

After “(2)”, insert “or (2A)”.

**107 Paragraph 33(5)(a)**

Omit “management plan”, substitute “management arrangement or authorisation process”.

**108 Paragraph 33(5)(b)**

Omit “management plan”, substitute “management arrangement or authorisation process”.

**109 Paragraph 33(5)(b)**

After “House—”, insert “subject to subsection (5A)”.

Note: The heading to subsection 33(5) is replaced by the heading “*Limitations on accreditation during period for opposition*”.

**110 After subsection 33(5)**

Insert:

(5A) If:

(a) notice of a motion to oppose accreditation of the management arrangement or authorisation process is given in a House of the Parliament within 15 sitting days after the management arrangement or authorisation process is laid before the House under this section; and

(b) the notice is withdrawn or otherwise disposed of within 15 sitting days of that House after the notice is given;

then, subject to paragraph (5)(a), the Minister may accredit the management arrangement or authorisation process after the motion is withdrawn or otherwise disposed of.

**111 Subsections 33(6) and (7)**

Repeal the subsections, substitute:

*No accreditation after accreditation opposed*

(6) The Minister must not accredit the management arrangement or authorisation process if either House of the Parliament passes a resolution opposing accreditation of the management arrangement or authorisation process following a motion of which notice has

been given within 15 sitting days after the management arrangement or relevant part of the law has been laid before the House under this section.

*No accreditation if motion not defeated in time*

- (7) The Minister must not accredit the management arrangement or authorisation process if, at the end of 15 sitting days after notice of a motion to oppose accreditation of the management arrangement or authorisation process that was given in a House of the Parliament within 15 sitting days after the management arrangement or relevant part of the law was laid before the House under this section:
- (a) the notice has not been withdrawn and the motion has not been called on; or
  - (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of.

**112 Paragraph 33(8)(a)**

Omit “management plan”, substitute “management arrangement or authorisation process”.

**113 Subsection 33(8)**

Omit “management plan” (last occurring), substitute “management arrangement or relevant part of the law”.

**114 Subsection 33(8)**

After “(5),”, insert “(5A),”.

**115 Sections 34B to 34D**

Omit “management plan” (wherever occurring), substitute “management arrangement or authorisation process”.

**116 After paragraph 34D(1)(c)**

Insert:

- (ca) the Minister has had regard to any approved conservation advice for the species or community; and

**117 At the end of subsection 34D(2)**

Add:

; and (d) the Minister has had regard to any approved conservation advice for the species or community.

**118 Sections 34E and 34F**

Omit “management plan” (wherever occurring), substitute “management arrangement or authorisation process”.

**119 Paragraphs 35(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) a declaration made under section 33 is revoked; and
- (b) before the revocation, an action was being taken that could be taken without approval under Part 9 because its taking was covered by the declaration; and
- (c) the action had not been completed before the revocation;

**120 Section 36**

Omit “management plan” (wherever occurring), substitute “management arrangement or authorisation process”.

**121 At the end of Subdivision D of Division 2 of Part 4**

Add:

**36A Minor amendments of accredited management arrangement or accredited authorisation process**

(1) If:

- (a) a management arrangement or an authorisation process is an accredited management arrangement or an accredited authorisation process; and
- (b) the management arrangement or authorisation process is amended, or is proposed to be amended; and
- (c) the Minister is satisfied that the amendments are, or will be, minor; and
- (d) the Minister is satisfied that the management arrangement or authorisation process as amended meets, or will meet, the requirements of:
  - (i) paragraphs 33(3)(a), (b) and (c); and
  - (ii) section 34A; and



- (iii) subsection 34B(2), 34BA(2), 34C(2), 34D(2), 34E(2) or 34F(2) (as the case requires);  
the Minister may, by instrument in writing, determine that this section applies to the amendments.
- (2) If the Minister makes a determination under subsection (1):
- (a) the management arrangement or authorisation process as amended is, for the purposes of this Act, taken to be an accredited management arrangement or accredited authorisation process; and
  - (b) subsections 33(1) to (8) do not apply in relation to the amendments to the management arrangement or authorisation process, or the management arrangement or authorisation process as amended; and
  - (c) actions taken after the determination is made in accordance with the accredited management arrangement or accredited authorisation process as amended do not require approval under Part 9 for the purposes of a specified provision of Part 3.
- (3) The Minister must publish a determination under subsection (1) in accordance with the regulations (if any).
- (4) A determination under subsection (1) is not a legislative instrument.

## **122 After Division 2 of Part 4**

Insert:

### **Division 3—Actions covered by Ministerial declarations and bioregional plans**

#### **Subdivision A—Effect of declarations**

##### **37 Actions declared by Minister not to need approval**

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

- (a) the action is an action, or one of a class of actions, declared by the Minister under section 37A not to require approval

under Part 9 for the purposes of the provision (because the taking of the action is in accordance with a particular bioregional plan); and

- (b) the declaration is in operation when the action is taken; and
- (c) the action is taken:
  - (i) in the bioregion to which the plan applies; and
  - (ii) in accordance with the plan.

Note: Division 2 of Part 12 deals with bioregional plans.

## **Subdivision B—Making declarations**

### **37A Making declarations that actions do not need approval under Part 9**

Subject to Subdivisions C and D, the Minister may, by legislative instrument, declare that an action or class of actions specified in the declaration, wholly or partly by reference to the fact that the taking of the action or class of actions is in accordance with a bioregional plan, do not require approval under Part 9 for the purposes of a specified provision of Part 3.

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

Note 2: Section 37K provides for revocation of a declaration.

## **Subdivision C—Prerequisites for making declarations**

### **37B General considerations**

- (1) In deciding whether to make a declaration under section 37A, the Minister must consider the following, so far as they are not inconsistent with any other requirements of this Subdivision:
  - (a) matters relevant to any matter protected by a provision of Part 3 that the Minister considers is relevant to the action or class of actions to which the declaration relates;
  - (b) economic and social matters.
- (2) In considering those matters, the Minister must take into account the principles of ecologically sustainable development.
- (3) The Minister must not make a declaration under section 37A in relation to an action or class of actions and a provision of Part 3 if

the Minister considers that the action, or an action in the class, if taken, would have unacceptable or unsustainable impacts on a matter protected by the provision.

**37C Minister may make declaration only if prescribed criteria are met**

The Minister may make a declaration under section 37A only if the Minister is satisfied that the declaration:

- (a) accords with the objects of this Act; and
- (b) meets the requirements (if any) prescribed by the regulations.

**37D Declarations relating to declared World Heritage properties**

The Minister may make a declaration under section 37A relating to a declared World Heritage property only if:

- (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the World Heritage Convention; and
- (b) the Minister is satisfied that the declaration will promote the management of the property in accordance with the Australian World Heritage management principles; and
- (c) the Minister is satisfied that the declaration is not inconsistent with a plan that has been prepared for the management of the declared World Heritage property under section 316 or as described in section 321.

**37E Declarations relating to National Heritage places**

The Minister may make a declaration under section 37A relating to a National Heritage place only if:

- (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the National Heritage management principles; and
- (b) the Minister is satisfied that the declaration is not inconsistent with:
  - (i) an agreement to which the Commonwealth is a party in relation to the National Heritage place; or
  - (ii) a plan that has been prepared for the management of the National Heritage place under section 324S or as described in section 324X.

### **37F Declarations relating to declared Ramsar wetlands**

The Minister may make a declaration under section 37A relating to a declared Ramsar wetland only if:

- (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the Ramsar Convention; and
- (b) the Minister is satisfied that the declaration will promote the management of the wetland in accordance with the Australian Ramsar management principles.

### **37G Declarations relating to listed threatened species and ecological communities**

The Minister may make a declaration under section 37A relating to a listed threatened species or a listed threatened ecological community only if:

- (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under:
  - (i) the Biodiversity Convention; or
  - (ii) the Apia Convention; or
  - (iii) CITES; and
- (b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species or community to which the declaration relates; and
- (c) the Minister is satisfied that the declaration is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
- (d) the Minister has had regard to any approved conservation advice for the species or community.

### **37H Declarations relating to listed migratory species**

The Minister may make a declaration under section 37A relating to a listed migratory species only if:

- (a) the Minister is satisfied that the declaration is not inconsistent with whichever of the following conventions or agreements because of which the species is listed:
  - (i) the Bonn Convention;
  - (ii) CAMBA;

- (iii) JAMBA;
- (iv) an international agreement approved under subsection 209(4); and
- (b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species to which the declaration relates.

### **37J No declarations relating to nuclear actions**

The Minister must not make a declaration relating to an action consisting of, or involving the construction or operation of, any of the following nuclear installations:

- (a) a nuclear fuel fabrication plant;
- (b) a nuclear power plant;
- (c) an enrichment plant;
- (d) a reprocessing facility.

## **Subdivision D—Other rules about declarations**

### **37K Revoking declarations**

#### *Revoking declarations*

- (1) The Minister may, by legislative instrument, revoke a declaration made under section 37A.

#### *Revocation does not affect some actions*

- (2) If:
  - (a) a declaration made under section 37A is revoked; and
  - (b) before the revocation, an action was being taken that could be taken without approval under Part 9 because its taking was covered by the declaration; and
  - (c) the action had not been completed before the revocation;this Act continues to operate in relation to the action as if the declaration had not been revoked.

### **37L Other rules about declarations**

#### *Minister must not give preference*

- (1) In making a declaration under section 37A, or revoking a declaration under section 37K, relating to an action taken:
  - (a) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
  - (b) by a constitutional corporation;the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

#### *Publishing declarations*

- (2) Within 10 business days after the Minister makes a declaration under section 37A, or an instrument under section 37K revoking a declaration, the Minister must publish the declaration or instrument in accordance with the regulations.

## **Division 3A—Actions covered by conservation agreements**

### **37M Actions declared by conservation agreement not to need approval**

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

- (a) the action is included in a class of actions declared in a conservation agreement, in accordance with section 306A, not to require approval under Part 9 for the purposes of the provision; and
- (b) the conservation agreement is in operation when the action is taken; and
- (c) the action is taken in accordance with the conditions (if any) specified in the declaration.

### **123 Paragraph 43A(1)(b)**

Repeal the paragraph, substitute:

- (b) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and
-

**124 Paragraph 43A(1)(c)**

After “no further”, insert “specific”.

**125 At the end of subsection 43A(1)**

Add:

; and (d) at the time the action is taken, the specific environmental authorisation continues to be in force.

**126 After subsection 43A(1)**

Insert:

(1A) For the purposes of paragraphs (1)(c) and (d), a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation unless:

- (a) the action that is authorised by the authorisation following the renewal or extension is the same as the action that was authorised by the authorisation before the commencement of this Act; and
- (b) the renewal or extension could properly be made or given without any further consideration of the environmental impacts of the action.

Note: If a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation, the condition in paragraph (1)(c) or (d) would not be met.

**127 Subsection 43A(2)**

Omit “this section”, substitute “this Act”.

**128 Subsection 43A(2)**

Insert:

*specific environmental authorisation* means an environmental authorisation that:

- (a) identifies the particular action by reference to acts and matters uniquely associated with that action; or
- (b) was issued or granted following a consideration of the particular action by reference to acts and matters uniquely associated with that action.

**129 Subsection 43B(1)**

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Omit “For this purpose, an enlargement, expansion or intensification of use is not a *continuation* of a use.”.

### 130 Subsection 43B(2)

Repeal the subsection, substitute:

- (2) However, subsection (1) does not apply to an action if:
- (a) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and
  - (b) at the time the action is taken, the specific environmental authorisation continues to be in force.

Note: In that case, section 43A applies instead.

- (3) For the purposes of this section, neither of the following is a *continuation* of a use of land, sea or seabed:
- (a) an enlargement, expansion or intensification of use;
  - (b) either:
    - (i) any change in the location of where the use of the land, sea or seabed is occurring; or
    - (ii) any change in the nature of the activities comprising the use;that results in a substantial increase in the impact of the use on the land, sea or seabed.

### 131 Subsection 46(1)

Omit “management plan that is a bilaterally accredited management plan”, substitute “management arrangement or authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process”.

### 132 Subsection 46(2)

Repeal the subsection, substitute:

*What is a bilaterally accredited management arrangement?*

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



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

*What is a **bilaterally accredited authorisation process**?*

- (2A) An authorisation process is a **bilaterally accredited authorisation process** for the purposes of a bilateral agreement declaring that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if:
- (a) the authorisation process is set out in a law of the State or Territory that is a party to the agreement, and the law and the process are identified in or under the agreement; and
  - (b) the authorisation process has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

### **133 Subsection 46(3)**

Omit “, the Minister may accredit in writing a management plan”, substitute “or (2A), the Minister may accredit in writing a management arrangement or an authorisation process”.

Note: The heading to subsection 46(3) is altered by omitting “*management plan*” and substituting “*management arrangement or authorisation process*”.

### **134 Paragraph 46(3)(a)**

Repeal the paragraph, substitute:

- (a) the management arrangement or authorisation process and the law under which it is in force, or in which it is set out, meet the criteria prescribed by the regulations; and

### **135 Paragraph 46(3)(b)**

Omit “management plan”, substitute “management arrangement or authorisation process”.

### **136 Paragraph 46(3)(c)**

Omit “management plan”, substitute “management arrangement or authorisation process”.

**137 Subsection 46(3)**

Omit “management plan” (last occurring), substitute “management arrangement or authorisation process”.

**138 Subsection 46(3) (note)**

Omit “plan”, substitute “management arrangement or an authorisation process”.

**139 Subsection 46(4)**

Repeal the subsection, substitute:

*Tabling of management arrangement or authorisation process before accreditation*

- (4) The Minister must cause to be laid before each House of the Parliament a copy of:
- (a) in the case of a management arrangement—the management arrangement; or
  - (b) in the case of an authorisation process—the relevant part of the law in which the authorisation process is set out;
- that the Minister is considering accrediting for the purposes of subsection (2) or (2A).

**140 Subsection 46(5)**

Omit “management plan”, substitute “management arrangement or authorisation process”.

**141 Subsection 46(5)**

After “(2)”, insert “or (2A)”.

**142 Paragraph 46(5)(a)**

Omit “the plan”, substitute “the management arrangement or authorisation process”.

**143 Paragraph 46(5)(b)**

Omit “management plan”, substitute “management arrangement or authorisation process”.

**144 Paragraph 46(5)(b)**

After “House—”, insert “subject to subsection (5A)”.

Note: The heading to subsection 46(5) is replaced by the heading “*Limitations on accreditation during period for disallowance*”.

#### **145 After subsection 46(5)**

Insert:

(5A) If:

- (a) notice of a motion to disallow accreditation of the management arrangement or authorisation process is given in a House of the Parliament within 15 sitting days after the management arrangement or authorisation process is laid before the House under this section; and
- (b) the notice is withdrawn or otherwise disposed of within 15 sitting days of that House after the notice is given;

then, subject to paragraph (5)(a), the Minister may accredit the management arrangement or authorisation process after the motion is withdrawn or otherwise disposed of.

#### **146 Subsections 46(6) and (7)**

Repeal the subsections, substitute:

*Disallowance motion passed*

- (6) The Minister must not accredit the management arrangement or authorisation process if either House of the Parliament passes a resolution disallowing the accreditation of the management arrangement or authorisation process following a motion of which notice has been given within 15 sitting days after the management arrangement or relevant part of the law has been laid before the House.

*Disallowance motion not defeated in time*

- (7) The Minister must not accredit the management arrangement or authorisation process if, at the end of 15 sitting days after notice of a motion to disallow the management arrangement or authorisation process that was given in a House of the Parliament within 15 sitting days after the management arrangement or relevant part of the law was laid before the House:
  - (a) the notice has not been withdrawn and the motion has not been called on; or

(b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of.

**147 Paragraph 46(8)(a)**

Omit “management plan”, substitute “management arrangement or authorisation process”.

**148 Subsection 46(8)**

Omit “management plan” (last occurring), substitute “management arrangement or relevant part of the law”.

**149 Subsection 46(8)**

After “(5),”, insert “(5A),”.

**150 Subsection 46(9)**

Omit “management plan”, insert “management arrangement or authorisation process”.

**151 Subsection 46(10)**

Omit “The”, substitute “If the declaration is for actions approved in accordance with a bilaterally accredited management arrangement, the”.

**152 Paragraphs 46(10)(a) and (b)**

Omit “a management plan that is a bilaterally accredited management plan for the purposes of the agreement”, substitute “the management arrangement”.

**153 Subsection 51(2)**

Omit “management plan”, substitute “management arrangement or an authorisation process”.

**154 Paragraphs 51(2)(a) and (b)**

Omit “the plan”, substitute “the management arrangement or authorisation process”.

**155 Subsection 51A(2)**

Omit “management plan”, substitute “management arrangement or an authorisation process”.

**156 Subsection 51A(2)**

Omit “the plan”, substitute “the management arrangement or authorisation process”.

**157 Subsection 52(2)**

Omit “management plan”, substitute “management arrangement or an authorisation process”.

**158 Paragraphs 52(2)(a) and (b)**

Omit “the plan”, substitute “the management arrangement or authorisation process”.

**159 After paragraph 53(1)(c)**

Insert:

(ca) the Minister has had regard to any approved conservation advice for the species or community; and

**160 Subsection 53(2)**

Omit “management plan”, substitute “management arrangement or an authorisation process”.

**161 Paragraphs 53(2)(a), (b) and (c)**

Omit “the plan”, substitute “the management arrangement or authorisation process”.

**162 At the end of subsection 53(2)**

Add:

; and (d) the Minister has had regard to any approved conservation advice for the species or community.

**163 Subsection 54(2)**

Omit “management plan”, substitute “management arrangement or an authorisation process”.

**164 Paragraphs 54(2)(a) and (b)**

Omit “the plan”, substitute “the management arrangement or authorisation process”.

**165 Section 55**

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Omit “management plan”, substitute “management arrangement or an authorisation process”.

## **166 At the end of Division 2 of Part 5**

Add:

### **Subdivision C—Minor amendments of bilateral agreements**

#### **56A Ministerial determination of minor amendments to bilateral agreements**

- (1) This section applies if:
  - (a) the Minister intends to develop a draft amendment to a bilateral agreement (the *principal agreement*); and
  - (b) the Minister is satisfied that the amendment will not have a significant effect on the operation of the principal agreement; and
  - (c) the Minister makes a determination, in writing, to that effect.
- (2) If the Minister makes a determination under paragraph (1)(c):
  - (a) the following provisions of this Part do not apply in relation to the amendment to the principal agreement:
    - (i) subsection 45(3);
    - (ii) paragraphs 45(4)(b) and (c);
    - (iii) section 49A; and
  - (b) the Minister must publish the principal agreement, as amended by the amending agreement, at the same time as publishing the amending agreement under paragraph 45(4)(a).
- (3) A determination made under paragraph (1)(c) is not a legislative instrument.

#### **167 Subsection 64(2)**

Omit “management plan that is a bilaterally accredited management plan”, substitute “management arrangement or an authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process”.

#### **168 Subsections 65(1) and (2) (including the notes)**

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Repeal the subsections, substitute:

- (1) A bilateral agreement ceases to have effect for the purposes of this Act at the time when the agreement provides for it to cease to so have effect.

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

- (2) The Minister must cause a review of the operation of a bilateral agreement to be carried out at least once every 5 years while the agreement remains in effect. The Minister must give a copy of the report of each review to the appropriate Minister of the State or Territory that is party to the agreement.

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

**169 Subsection 65(3)**

After “the report”, insert “on each subsection (2) review”.

**170 Subsection 65A(2)**

Omit “management plan that was a bilaterally accredited management plan”, substitute “management arrangement or an authorisation process that was a bilaterally accredited management arrangement or a bilaterally accredited authorisation process”.

**171 After paragraph 66(c)**

Insert:

(ca) information included in the referral; or
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**172 Section 67**

After “would be”, insert “(or would, but for section 25AA or 28AB, be)”.

**173 After section 67**

Insert:

**67A Prohibition on taking controlled action without approval**

A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the relevant provision of Part 3.

Note: A person can be restrained from contravening this section by an injunction under section 475.

**174 At the end of section 68**

Add:

- (6) This section is affected by section 68A.

**175 After section 68**

Insert:

**68A Actions proposed to be taken under a contract etc.**

- (1) This section applies in relation to an action that is proposed to be taken under a contract or an agreement, arrangement or understanding, other than:
- (a) a subcontract; or
  - (b) an agreement, arrangement or understanding entered into for the purposes of a contract or another agreement, arrangement or understanding.

Note: A person proposing to take an action under a subcontract, or an agreement, arrangement or understanding entered into for the purposes of a contract or another agreement, arrangement or understanding, is not required or permitted to refer the proposal to take the action to the Minister under section 68.

- (2) For the purposes of section 68 and subject to subsection (3), a reference to, or relating to, a person proposing to take the action is a reference to, or relating to, any of the following persons:
- (a) a party to the contract, agreement, arrangement or understanding for whose benefit the action is proposed to be taken;
  - (b) a person who:
    - (i) requested or procured, or proposes to request or procure, the creation of the contract, agreement, arrangement or understanding; and
    - (ii) is to be responsible for controlling and directing the taking of the proposed action.
- (3) If a person (the *first person*) referred to in paragraph (2)(a) or (b) refers a proposal to take the action to the Minister under section 68:



- (a) no other person is required or permitted to refer a proposal to take the action to the Minister under section 68; and
  - (b) for the purposes of this Chapter, a reference to, or relating to, the person proposing to take the action is a reference to, or relating to, the first person.
- (4) For the purposes of this section, a reference to a contract or subcontract or an agreement, arrangement or understanding includes a reference to a proposed contract, proposed subcontract, proposed agreement, proposed arrangement or proposed understanding.
- (5) Nothing in this section is intended to affect the capacity of a person to refer a proposal to take an action to the Minister under subsection 68(1) or (2) on behalf of the person proposing to take the action.

**176 Subsection 70(7)**

Repeal the subsection.

**177 Subsection 71(1)**

Omit “(except the Minister)”.

**178 At the end of section 72**

Add:

- (3) A referral of a proposal to take an action may include alternative proposals relating to any of the following:
- (a) the location where the action is to be taken;
  - (b) the time frames within which the action is to be taken;
  - (c) the activities that are to be carried out in taking the action.

**179 After subsection 74(1)**

Insert:

*Inviting comments from the Australian Heritage Council*

- (1A) If the Minister thinks, in relation to an action that is the subject of a proposal referred to the Minister, that section 15B or 15C could be a controlling provision for the proposed action because of National Heritage values of a National Heritage place, the Minister may

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invite the Australian Heritage Council to give the Minister comments, within 10 business days (measured in Canberra), on whether the proposed action is a controlled action.

Note: Sections 15B and 15C protect the National Heritage values of National Heritage places.

(1B) If the Minister thinks, in relation to an action that is the subject of a proposal referred to the Minister, that section 23, 24A, 26, 27A, 27B, 27C or 28 could be a controlling provision for the proposed action because of heritage values of a place, the Minister may invite the Australian Heritage Council to give the Minister comments, within 10 business days (measured in Canberra), on whether the proposed action is a controlled action.

Note: Sections 23, 24A, 26, 27A, 27B, 27C and 28 protect the environment, which includes the heritage values of places. See the definition of *environment* in section 528.

**180 Subsection 74(2)**

Omit all the words after “self-governing Territory,” (not including the note), substitute:

the Environment Minister must, if he or she thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance):

- (a) inform the appropriate Minister of the State or Territory; and
- (b) invite that Minister to give the Environment Minister within 10 business days:
  - (i) comments on whether the proposed action is a controlled action; and
  - (ii) information relevant to deciding which approach would be appropriate to assess the relevant impacts of the action (including if the action could be assessed under a bilateral agreement).

**181 At the end of subsection 74(3)**

Add:

Note: If the action is also the subject of a permit application under section 200, 215, 237 or 257 and the application is made at the same time as the referral, the referral and invitation for comments that must be published under this subsection may be published together with the application and invitation for comments that must be published under section 200, 215, 237 or 257.

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**182 After subsection 74(3)**

Insert:

*Non-disclosure of commercial-in-confidence information*

- (3A) The Environment Minister may refuse to cause to be published on the Internet, under subsection (3), so much of the information included in a referral as the Minister is satisfied is commercial-in-confidence.
- (3B) The Environment Minister must not be satisfied that particular information included in a referral is commercial-in-confidence unless a person demonstrates to the Minister that:
- (a) release of the information would cause competitive detriment to the person; and
  - (b) the information is not in the public domain; and
  - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
  - (d) the information is not readily discoverable.

**183 Subsection 74(4)**

Repeal the subsection.

**184 At the end of Division 1 of Part 7**

Add:

**74AA Offence of taking action before decision made in relation to referral etc.**

*Referral made: taking action while decision making process still going on*

- (1) A person commits an offence if:
- (a) the person takes an action; and
  - (b) either:
    - (i) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister by the person under section 68; or
    - (ii) a proposal to take the action (or a larger action of which the action is a component) has been referred to the

Minister under section 69 or 71 and the person has been informed of the referral under section 73; and

- (c) the referral has not been withdrawn under section 170C; and
- (d) the Minister has not decided under subsection 74A(1) not to accept the referral; and
- (e) provisions of this Chapter are not stopped by Division 1A from applying in relation to the referral; and
- (f) provisions of this Chapter are not stopped by section 155 from applying because of the referral in relation to the action (or a larger action of which the action is a component); and
- (g) no decision that the action (or a larger action of which the action is a component) is not a controlled action is in operation under section 75 in relation to the referral; and
- (h) no decision is in operation under Part 9 in relation to the referral approving, or not approving, the taking of the action (or a larger action of which the action is a component).

Penalty: 500 penalty units.

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

- (2) Subsection (1) does not apply to the taking of an action by a person if:
- (a) the taking of the action is reasonably necessary in order to comply with a requirement or request made under this Part or Part 8 or 9 in relation to the action (or a larger action of which the action is a component); and
  - (b) before taking the action, the person gave the Minister written notice of the taking of the action; and
  - (c) the notice was given in accordance with any applicable requirements of the regulations.

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

*Referral requested: taking action before requested referral is made*

- (3) A person commits an offence if:
- (a) the person takes an action; and
  - (b) the Minister, under section 70, has requested the referral by the person of a proposal to take the action (or a larger action of which the action is a component) to the Minister; and

- (c) the request has not been revoked; and
- (d) the referral has not been made.

Penalty: 500 penalty units.

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

## **185 After Division 1 of Part 7**

Insert:

### **Division 1A—Decision that action is clearly unacceptable**

#### **74B Application of this Division**

- (1) This Division applies to the referral of a proposal to take an action if, within 20 business days after the Minister receives the referral:
  - (a) the Minister considers, on the basis of the information in the referral, that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and
  - (b) the Minister decides that this Division should apply to the referral.
- (2) If this Division applies to a referral, any other provisions of this Chapter that would, apart from this subsection, have applied to the referral cease to apply to the referral.
- (3) Subsection (2) has effect subject to paragraph 74D(6)(a).

#### **74C Informing person proposing to take action that action is clearly unacceptable**

- (1) As soon as practicable after making the decision under paragraph 74B(1)(b) in relation to a referral, the Minister must give written notice of the decision to:
  - (a) the person proposing to take the action that is the subject of the referral; and
  - (b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action that is the subject of the referral).
- (2) The notice must:

- (a) state that the Minister considers that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and
  - (b) set out the reasons for the Minister's decision.
- (3) After receiving the notice under subsection (1), the person proposing to take the action may:
- (a) withdraw the referral and take no further action in relation to the proposed action; or
  - (b) withdraw the referral and refer a new proposal to take a modified action to the Minister in accordance with Division 1; or
  - (c) request the Minister, in writing, to reconsider the referral.

Note 1: Section 170C sets out the procedure for withdrawing a referral.

Note 2: A referral of a proposal to take a modified action will be a new referral for the purposes of this Chapter.

#### **74D Procedure if Minister is requested to reconsider referral**

- (1) This section applies if the Minister receives a request under paragraph 74C(3)(c) to reconsider a referral.

##### *Inviting public comment*

- (2) The Minister must, within 10 business days after receiving the request, publish on the Internet:
- (a) a notice stating that the Minister proposes not to approve the taking of the action that is the subject of the referral; and
  - (b) the reasons for the Minister's decision; and
  - (c) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing on:
    - (i) the impacts that the action would have on a matter protected by a provision of Part 3; and
    - (ii) the Minister's proposal to refuse to approve the taking of the action.

##### *Report about relevant impacts of action*

- (3) Within 10 business days after the end of the period for comment under paragraph (2)(c), the Secretary must:
-

- (a) prepare a written report about the relevant impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3; and
- (b) give the Minister:
  - (i) the report; and
  - (ii) a copy of any comments received by the Secretary within the period for comment.

In preparing the report, the Secretary must have regard to the comments referred to in subparagraph (b)(ii).

*Decision following reconsideration*

- (4) Within 20 business days after receiving the report under subsection (3), the Minister must:
  - (a) if the Minister still considers that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3—decide to refuse to approve the taking of the action; or
  - (b) decide that the referral is to be dealt with under the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral.
- (5) If the Minister decides to refuse to approve the taking of the action, the Minister must, within 10 business days after making the decision, give notice of the decision to:
  - (a) the person proposing to take the action; and
  - (b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action).

Note: The person proposing to take the action may request reasons for the refusal and the Minister must give them. See section 13 of the *Administrative Decisions (Judicial Review) Act 1977*.

- (6) If the Minister makes a decision under paragraph (4)(b):
  - (a) the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral start to apply to the referral; and
  - (b) for the purposes of the application of those provisions, a day is not to be counted as a business day if it is:
    - (i) on or after the day the Minister received the referral; and

- (ii) on or before the day the Minister makes the decision under paragraph (4)(b).

Note: If the Minister had already complied with section 74 in relation to the referral before the Minister made the decision under paragraph 74B(1)(b) in relation to the referral, the Minister is not required to comply with section 74 again.

**186 At the end of subsection 75(1)**

Add:

Note: The Minister may revoke a decision made under subsection (1) about an action and substitute a new decision. See section 78.

**187 Paragraph 75(1A)(a)**

Omit “(if any)”.

**188 At the end of subsection 75(2)**

Add:

Note: *Impact* is defined in section 527E.

**189 After subsection 75(2)**

Insert:

- (2A) For the purposes of subsection (2), if the provision of Part 3 is subsection 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 26(1) or 27A(1), then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in or on a Commonwealth area, a Territory, a Commonwealth marine area or Commonwealth land:
- (a) has or will have; or
  - (b) is likely to have;
- on the matter.
- (2B) Without otherwise limiting any adverse impacts that the Minister must consider under paragraph (2)(a), the Minister must not consider any adverse impacts of:
- (a) any RFA forestry operation to which, under Division 4 of Part 4, Part 3 does not apply; or
  - (b) any forestry operations in an RFA region that may, under Division 4 of Part 4, be undertaken without approval under Part 9.



**190 Subsection 75(5)**

Repeal the subsection (not including the heading), substitute:

- (5) The Minister must make the decisions under subsection (1) and, if applicable, the designation under subsection (3), within 20 business days after the Minister receives the referral of the proposal to take the action.

Note: If the Minister decides, under subsection 75(1), that the action is a controlled action, the Minister must, unless the Minister has requested more information under subsection 76(3) or section 89, decide on the approach to be used for assessment of the relevant impacts of the action on the same day as the Minister makes the decision under subsection 75(1)—see subsection 88(2).

**191 Subsection 75(6)**

Omit “section 76”, substitute “subsection 76(1) or (2)”.

**192 Section 76**

Before “If the Minister”, insert “(1)”.

Note: The heading to section 76 is altered by omitting “*decision*” and substituting “*decisions*”.

**193 At the end of section 76**

Add:

- (2) Before the Minister makes the decisions under subsection 75(1) in relation to the action, the Minister may request the person proposing to take the action to provide information about whether or not the action is a component of a larger action that is proposed to be taken by the person.
- (3) If the Minister believes on reasonable grounds that the information given to the Minister in relation to the action is not enough to allow the Minister to make an informed decision on the approach to be used for assessment of the relevant impacts of the action, the Minister may request the person proposing to take the action to provide specified information relevant to making the decision.
- (4) Without limiting subsection (3), if the action is to be taken in a State or self-governing Territory, the Minister may request the person proposing to take the action to provide information about:
- (a) whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and

- (b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.
- (5) The Minister may make a request under subsection (3) even if the Minister has not yet made the decisions under subsection 75(1) in relation to the action.

#### **194 Subsection 77A(1)**

Repeal the subsection, substitute:

- (1) If, in deciding whether the action is a controlled action or not, the Minister has made a decision (the *component decision*) that a particular provision of Part 3 is not a controlling provision for the action because the Minister believes it will be taken in a particular manner, the notice, to be provided under section 77, must set out the component decision, identifying the provision and the manner.

Note: The Minister may decide that a provision of Part 3 is not a controlling provision for an action because he or she believes that the action will be taken in a manner that will ensure the action will not have (and is not likely to have) an adverse impact on the matter protected by the provision.

- (1A) For the purposes of subsection (1), it does not matter whether or not the Minister believes that the action will be taken in accordance with:
  - (a) an accredited management arrangement or an accredited authorisation process for the purposes of a declaration under section 33; or
  - (b) a bioregional plan to which a declaration made under section 37A relates; or
  - (c) a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of a bilateral agreement.

#### **195 Before section 78**

Insert:

### **Division 3—Reconsideration of decisions**

#### **196 Paragraphs 78(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) the following requirements are met:
-

- (i) the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77;
  - (ii) the Minister is satisfied that the action is not being, or will not be, taken in the manner identified; or
- (ba) the following requirements are met:
- (i) the first decision was that the action was not a controlled action because of a provision of a bilateral agreement and a management arrangement or an authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement;
  - (ii) the provision of the agreement no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in force under, or set out in, a law of a State or a self-governing Territory identified in or under the agreement; or
- (c) the following requirements are met:
- (i) the first decision was that the action was not a controlled action because of a declaration under section 33 and a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration;
  - (ii) the declaration no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in operation under, or set out in, a law of the Commonwealth identified in or under the declaration; or
- (ca) the following requirements are met:
- (i) the first decision was that the action was not a controlled action because of a declaration under section 37A and a bioregional plan to which the declaration relates;
  - (ii) the declaration no longer operates in relation to the action, or the bioregional plan is no longer in force; or

**197 At the end of subsection 78(1)**

Add:

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- Note 1: Subsection 75(1) provides for decisions about whether an action is a controlled action and what the controlling provisions for the action are.
- Note 2: A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca). See section 78A.
- Note 3: If the Minister decides to revoke a decision under subsection (1) and substitute a new decision for it, the Minister is not required to carry out the processes referred to in sections 73 and 74 again before making the new decision.

**198 After section 78**

Insert:

**78A Request for reconsideration of decision by person other than State or Territory Minister**

- (1) A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca).

Note: Section 79 deals with requests for reconsideration by a Minister of a State or self-governing Territory.

- (2) A request under subsection (1) must:
- (a) be in writing; and
  - (b) set out the basis on which the person thinks the decision should be reconsidered; and
  - (c) if the regulations specify other requirements for requests under subsection (1)—comply with those requirements.
- (3) If a request is made under subsection (1) in relation to a decision that an action is a controlled action, or that particular provisions are controlling provisions for an action, then:
- (a) if the request is made by the designated proponent of the action—Part 8 ceases to apply in relation to the action until the Minister makes a decision in relation to the request; but
  - (b) if the request is made by another person—the application of Part 8 in relation to the action is not affected by the making of the request (subject to the outcome of the reconsideration).
- (4) If:

- (a) because of paragraph (3)(a), Part 8 has ceased to apply in relation to an action; and
  - (b) the Minister confirms the decision that is the subject of the request under subsection (1);
- then:
- (c) the application of Part 8 in relation to the action resumes (as does any assessment process under that Part that had previously commenced in relation to the action); and
  - (d) for the purposes of the resumed application of Part 8, a day is not to be counted as a business day if it is:
    - (i) on or after the day the Minister received the request; and
    - (ii) on or before the day the Minister confirms the decision.

**78B Minister must inform interested persons of request and invite comments**

- (1) The Minister (the *Environment Minister*) must comply with this section if he or she receives a request under section 78A to reconsider a decision made under subsection 75(1) about an action.

*Informing designated proponent of request and inviting comments*

- (2) If the request is made by a person other than the designated proponent of the action, the Environment Minister must:
  - (a) inform the designated proponent of the request in accordance with subsection (3); and
  - (b) invite the designated proponent to give the Environment Minister, within 10 business days, comments on the request.
- (3) For the purpose of paragraph (2)(a), the Environment Minister must inform the designated proponent of the request by giving the designated proponent such information relating to the request as the Minister considers appropriate. The Minister need not (for example) reveal the identity of the person who made the request.

*Inviting other Commonwealth Ministers to provide information*

- (4) The Environment Minister must:
  - (a) inform any other Minister who the Environment Minister believes has administrative responsibilities relating to the action of the request; and

- (b) invite each Minister informed to give the Environment Minister, within 10 business days, information about whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

*Inviting comments from appropriate State or Territory Minister*

- (5) If the request relates to an action proposed to be taken in a State or self-governing Territory and the Environment Minister thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance), the Environment Minister must:
  - (a) inform the appropriate Minister of the State or Territory of the request; and
  - (b) invite that Minister to give the Environment Minister, within 10 business days:
    - (i) comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action; and
    - (ii) any other information that the Minister of the State or Territory considers relevant to the reconsideration.

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

*Inviting public comment*

- (6) The Environment Minister must publish on the Internet:
  - (a) the request; and
  - (b) an invitation for anyone to give the Environment Minister, within 10 business days (measured in Canberra), comments in writing on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

**78C Minister must reconsider decision and give notice of outcome**

*Reconsideration of decision*

- (1) As soon as practicable after the end of the time within which information or comments may be given under section 78B in

relation to a request under section 78A to reconsider a decision about an action, the Minister must:

- (a) reconsider the decision; and
- (b) either:
  - (i) confirm the decision; or
  - (ii) revoke the decision in accordance with subsection 78(1), and substitute a new decision for it.

*Notice of outcome of reconsideration*

- (2) The Minister must give written notice of the outcome of the reconsideration to:
  - (a) the person who requested the reconsideration; and
  - (b) the person proposing to take the action (if that person is not the person referred to in paragraph (a)); and
  - (c) the designated proponent of the action (if the designated proponent is not the person referred to in paragraph (a) or (b)); and
  - (d) if the reconsideration relates to an action referred to in subsection 78B(5)—the appropriate Minister of the State or Territory.
- (3) After giving notice as described in subsection (2), the Minister must publish notice of the outcome of the reconsideration. The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way the Minister considers appropriate.

*Reasons for outcome of reconsideration*

- (4) The Minister must give reasons for the outcome of the reconsideration to a person who:
  - (a) has been given notice of the outcome of the reconsideration under paragraph (2)(a), (b) or (c); and
  - (b) within 28 days after being given the notice, has requested the Minister to provide reasons.

The Minister must do so as soon as practicable, and in any case within 28 days after receiving the request.

**199 Subsections 79(1) and (2)**

Repeal the subsections, substitute:

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- (1) This section applies if the Minister (the *Environment Minister*) has made a decision under subsection 75(1) about whether a provision of Division 1 of Part 3 is a controlling provision for an action proposed to be taken in a State or a self-governing Territory.

Note 1: Division 1 of Part 3 deals with requirements for approvals for actions involving matters of national environmental significance.

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

- (2) Within 10 business days after the appropriate Minister of the State or Territory is notified of the decision under subparagraph 77(1)(a)(iii), that Minister may request the Environment Minister to reconsider the Environment Minister's decisions made under subsection 75(1).

## 200 After paragraph 80(a)

Insert:

(aa) an assessment on referral information (see Division 3A);
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## 201 Subsection 82(2)

Omit "Division 1 or 2", substitute "Division 1, 2, 3 or 3A".

## 202 At the end of section 82

Add:

- (4) For the purposes of subsections (1) and (2), if subsection 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 26(1) or 27A(1) is, or would be, a controlling provision for the action, then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in or on a Commonwealth area, a Territory, a Commonwealth marine area or Commonwealth land:

(a) has or will have; or

(b) is likely to have;

on the matter.

## 203 After paragraph 85(a)

Insert:

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(aa) an assessment on referral information;
---

**204 Section 86**

Repeal the section.

**205 Subsection 87(1)**

Omit “the action”, substitute “an action that the Minister has decided is a controlled action”.

**206 After paragraph 87(1)(a)**

Insert:

(aa) assessment on referral information under Division 3A;

**207 Subsection 87(2)**

Repeal the subsection.

**208 Paragraph 87(3)(a)**

Omit “or under section 86”.

**209 Paragraph 87(3)(c)**

Omit “subsection (2)”, substitute “subparagraph 74(2)(b)(ii)”.

**210 After subsection 87(4)**

Insert:

*Assessment on referral information*

(4A) The Minister may decide on an assessment on referral information under Division 3A only if the Minister is satisfied (after considering the matters in subsection (3)) that the action meets the criteria prescribed in the regulations for the purposes of this subsection.

**211 Subsection 88(1)**

Repeal the subsection (not including the heading or the note), substitute:

(1) The Minister must decide on the approach to be used for assessment of the relevant impacts of the action within 20 business

days after the Minister receives the referral of the proposal to take the action.

**212 Subsections 88(2) and (3)**

Repeal the subsections, substitute:

*When initial decision must be made*

- (2) The Minister must make the decision under subsection (1) on the same day as the Minister has decided, under subsection 75(1), that the action is a controlled action, unless the Minister has requested more information under subsection 76(3) or section 89 for the purposes of deciding on the approach to be used for assessment of the relevant impacts of the action.

**213 Subsection 88(4)**

Omit “under section 89 for the purposes of deciding on the approach to be used for assessment of the relevant impacts of the action”, substitute “in relation to the action under subsection 76(1), (2) or (3) or section 89”.

**214 Section 89**

Before “If the Minister”, insert “(1).”

**215 At the end of section 89**

Add:

- (2) Without limiting subsection (1), if the action is to be taken in a State or self-governing Territory, the Minister may request the designated proponent of the action to provide information about:
  - (a) whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and
  - (b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.
- (3) The Minister may make a request in relation to an action under this section even if the Minister has made a request under subsection 76(3) in relation to the action.

**216 Subparagraph 91(1)(a)(i)**

Repeal the subparagraph, substitute:

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- (i) the person proposing to take the action; and
- (ia) the designated proponent of the action (if the designated proponent is not the person proposing to take the action); and

## **217 Division 4 of Part 8**

Repeal the Division, substitute:

## **Division 3A—Assessment on referral information**

### **92 Application of this Division**

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by assessment on referral information under this Division.

### **93 Recommendation report**

- (1) The Secretary must comply with this section within 30 business days after the Minister makes the decision under section 87.
- (2) The Secretary must prepare a draft recommendation report that includes recommendations on:
  - (a) whether the taking of the action should be approved under Part 9; and
  - (b) if approval is recommended, any conditions that should be attached to the approval.
- (3) The Secretary must publish on the Internet:
  - (a) the draft recommendation report; and
  - (b) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing relating to the draft recommendation report or the action.
- (3A) The Secretary may refuse to publish on the Internet, under subsection (3), so much of the draft recommendation report as:
  - (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of the security of the Commonwealth or its providing advice to the Minister; or
  - (b) the Secretary is satisfied is commercial-in-confidence.

- (3B) The Secretary must not be satisfied that a part of the draft recommendation report is commercial-in-confidence unless a person demonstrates to the Secretary that:
- (a) release of the information in that part would cause competitive detriment to the person; and
  - (b) the information in that part is not in the public domain; and
  - (c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
  - (d) the information in that part is not readily discoverable.
- (4) After the end of the period for comment, the Secretary must finalise the draft recommendation report, taking account of any comments received within that period.
- (5) As soon as practicable after finalising the draft recommendation report, the Secretary must give the Minister:
- (a) the finalised recommendation report; and
  - (b) either:
    - (i) a copy of any comments received within the period for comment; or
    - (ii) if no comments were received within that period—a written statement to that effect.

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

### **94 Application of this Division**

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by assessment on preliminary documentation under this Division.

### **95 Direction to publish referral information and invitation to comment—no further information required**

- (1) This section applies if the Minister was satisfied, at the time of making the decision (the *assessment approach decision*) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.

- (2) At the same time as the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:
- (a) specified information included in the referral to the Minister of the proposal to take the action; and
  - (b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and
  - (c) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.
- (3) The designated proponent must comply with the direction.
- Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.
- (4) A direction given under subsection (2) is not a legislative instrument.

**95A Direction to publish referral information and invitation to comment—further information required**

- (1) This section applies if the Minister was not satisfied, at the time of making the decision (the *assessment approach decision*) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.
- (2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the designated proponent to give the Minister specified information relevant to assessing the relevant impacts of the action, including information about strategies for mitigating any adverse impacts.
- (3) Within 10 business days after receiving the information requested under subsection (2), the Minister must give the designated proponent a written direction to publish, within the period specified

in the direction (not being less than 10 business days), in accordance with the regulations:

- (a) specified information included in the referral to the Minister of the proposal to take the action; and
  - (b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and
  - (c) specified information relating to the action that was received in response to the Minister's request under subsection (2); and
  - (d) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.
- (4) The designated proponent must comply with the direction.
- Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.
- (5) A direction given under subsection (3) is not a legislative instrument.

### **95B Procedure after end of period for comment**

#### *Procedure if comments are received*

- (1) If comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as practicable after the end of that period:
- (a) prepare a document that:
    - (i) sets out the information given to the Minister previously in relation to the action, with any changes or additions needed to take account of the comments; and
    - (ii) contains a summary of the comments received and how those comments have been addressed; and
  - (b) give the Minister:
    - (i) a copy of the document prepared under paragraph (a); and
    - (ii) a copy of the comments received.
- (2) Within 10 business days after the designated proponent has given the Minister the documents referred to in paragraph (1)(b), the

designated proponent must publish, in accordance with the regulations, a copy of the document prepared under paragraph (1)(a).

*Procedure if no comments are received*

- (3) If no comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as practicable after the end of that period, give the Minister a written statement to that effect.
- (4) Within 10 business days after the designated proponent has given the Minister the statement referred to in subsection (3), the designated proponent must publish, in accordance with the regulations, a copy of the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires.

*Definition*

- (5) In this section:

***period for comment*** means the period within which comments may be given under 95(2)(c) or 95A(3)(d), as the case requires.

### **95C Recommendation report**

- (1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:
  - (a) whether the taking of the action should be approved under Part 9; and
  - (b) if approval is recommended, any conditions that should be attached to the approval.
- (2) The recommendation report must be given to the Minister after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires, and before the end of the period applicable under paragraph 130(1B)(c) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

### **218 After section 96**

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Insert:

**96A Minister must give designated proponent written guidelines for preparation of draft public environment report**

- (1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft public environment report about the relevant impacts of the action. The guidelines so given are referred to as the *PER guidelines*.
- (2) The PER guidelines must be:
  - (a) one or more sets of standard guidelines prepared under section 96B that the Minister decides are appropriate for the preparation of the draft report in relation to the action; or
  - (b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft report in relation to the action—tailored guidelines prepared under section 97.
- (3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft report in relation to the action, the Minister must seek to ensure that the draft report, if prepared in accordance with those guidelines, will:
  - (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and
  - (b) address the matters (if any) prescribed by the regulations.

Note: Similar considerations apply in relation to tailored guidelines: see subsection 97(2).
- (4) The Minister must give the PER guidelines to the designated proponent:
  - (a) within 20 business days after the assessment approach decision was made under section 87; or
  - (b) if the Minister, under section 97, invites a person to comment on a draft of tailored guidelines for the preparation of the draft report within a specified period—within 20 business days after:
    - (i) the end of that period; or
    - (ii) if there is more than one such period, the end of the later or latest of those periods.



### **96B Standard guidelines**

- (1) The Minister may prepare one or more sets of standard guidelines, in writing, for the preparation of draft public environment reports about the relevant impacts of actions.

Note: See also subsection 96A(3).

- (2) A set of standard guidelines must set out requirements for the content and presentation of draft public environment reports about the relevant impacts of actions.
- (3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:
- (a) actions that are proposed to be taken by a specified industry sector; or
  - (b) actions for which a specified provision of Part 3 is a controlling provision.
- (4) A set of standard guidelines made under this section is not a legislative instrument.

### **219 Subsection 97(1)**

Repeal the subsection, substitute:

- (1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft public environment report about the relevant impacts of an action if the Minister decides that standard guidelines are not appropriate for the preparation of the draft report in relation to that action.

- (1A) Tailored guidelines must set out requirements for the content and presentation of the draft report in relation to the action.

Note: The heading to section 97 is replaced by the heading “**Tailored guidelines**”.

### **220 Subsection 97(2)**

Omit “the guidelines”, substitute “tailored guidelines”.

### **221 Subsection 97(3)**

Omit “The guidelines”, substitute “Tailored guidelines”.

### **222 Paragraph 97(4)(b)**

Before “guidelines”, insert “tailored”.

**223 Subsection 97(5)**

Omit “the guidelines”, substitute “tailored guidelines”.

**224 At the end of section 97**

Add:

- (6) Tailored guidelines made under this section are not a legislative instrument.

**225 Paragraph 98(1)(a)**

Repeal the paragraph, substitute:

- (a) prepare a draft public environment report in accordance with the PER guidelines about:
  - (i) the relevant impacts of the action; and
  - (ii) if the PER guidelines are tailored guidelines that require the draft report to include information about other impacts—those other impacts; and
- (ab) give the draft report to the Minister; and

**226 Subparagraph 98(1)(c)(ii)**

After “comments”, insert “in writing”.

**227 Subparagraph 98(1)(c)(ii)**

Omit “invitation; and”, substitute “invitation.”.

**228 Paragraph 98(1)(d)**

Repeal the paragraph.

**229 Subsection 98(2)**

Omit all the words after “satisfied”, substitute “that the draft report is in accordance with the PER guidelines”.

**230 Sections 99 and 100**

Repeal the sections, substitute:

## **99 Finalising public environment report**

- (1) After the end of the period specified in the invitation to comment under section 98, the designated proponent must finalise the draft public environment report.
- (2) The finalised report must:
  - (a) take account of any comments received within the period for comment; and
  - (b) contain a summary of any such comments and how those comments have been addressed.
- (3) As soon as practicable after finalising the draft report, the designated proponent must give the Minister:
  - (a) the finalised report; and
  - (b) either:
    - (i) a copy of any comments received within the period for comment; or
    - (ii) if no comments were received within that period—a written statement to that effect.
- (4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised report in accordance with the regulations.

## **100 Recommendation report**

- (1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:
  - (a) whether the taking of the action should be approved under Part 9; and
  - (b) if approval is recommended, any conditions that should be attached to the approval.
- (2) The recommendation report must be given to the Minister after the Minister receives the finalised public environment report under section 99 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

## 231 After section 101

Insert:

### 101A Minister must give designated proponent written guidelines for preparation of draft environmental impact statement

- (1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft environmental impact statement about the relevant impacts of the action. The guidelines so given are referred to as the *EIS guidelines*.
- (2) The EIS guidelines must be:
  - (a) one or more sets of standard guidelines prepared under section 101B that the Minister decides are appropriate for the preparation of the draft statement in relation to the action; or
  - (b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft statement in relation to the action—tailored guidelines prepared under section 102.
- (3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft statement in relation to the action, the Minister must seek to ensure that the draft statement, if prepared in accordance with those guidelines, will:
  - (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and
  - (b) address the matters (if any) prescribed by the regulations.

Note: Similar considerations apply in relation to tailored guidelines: see subsection 102(2).
- (4) The Minister must give the EIS guidelines to the designated proponent:
  - (a) within 20 business days after the assessment approach decision was made under section 87; or
  - (b) if the Minister, under section 102, invites a person to comment on a draft of tailored guidelines for the preparation of the draft statement within a specified period—within 20 business days after:
    - (i) the end of that period; or

- (ii) if there is more than one such period, the end of the later or latest of those periods.

### **101B Standard guidelines**

- (1) The Minister may prepare one or more sets of standard guidelines, in writing, for the preparation of draft environmental impact statements about the relevant impacts of actions.

Note: See also subsection 101A(3).

- (2) A set of standard guidelines must set out requirements for the content and presentation of draft environmental impact statements about the relevant impacts of actions.
- (3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:
- (a) actions that are proposed to be taken by a specified industry sector; or
  - (b) actions for which a specified provision of Part 3 is a controlling provision.
- (4) A set of standard guidelines made under this section is not a legislative instrument.

### **232 Subsection 102(1)**

Repeal the subsection, substitute:

- (1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft environmental impact statement about the relevant impacts of an action if the Minister decides that standard guidelines are not appropriate for the preparation of the draft statement in relation to that action.

- (1A) Tailored guidelines must set out requirements for the content and presentation of the draft statement in relation to the action.

Note: The heading to section 102 is replaced by the heading “**Tailored guidelines**”.

### **233 Subsection 102(2)**

Omit “the guidelines”, substitute “tailored guidelines”.

### **234 Subsection 102(3)**

Omit “The guidelines”, substitute “Tailored guidelines”.

**235 Paragraph 102(4)(b)**

Before “guidelines”, insert “tailored”.

**236 Subsection 102(5)**

Omit “the guidelines”, substitute “tailored guidelines”.

**237 At the end of section 102**

Add:

- (6) Tailored guidelines made under this section are not a legislative instrument.

**238 Paragraph 103(1)(a)**

Repeal the paragraph, substitute:

- (a) prepare a draft environmental impact statement in accordance with the EIS guidelines about:
  - (i) the relevant impacts of the action; and
  - (ii) if the EIS guidelines are tailored guidelines that require the draft statement to include information about other impacts—those other impacts; and
- (ab) give the draft statement to the Minister; and

**239 Subparagraph 103(1)(c)(ii)**

After “comments”, insert “in writing”.

**240 Subparagraph 103(1)(c)(ii)**

Omit “invitation; and”, substitute “invitation.”.

**241 Paragraph 103(1)(d)**

Repeal the paragraph.

**242 Subsection 103(2)**

Omit all the words after “satisfied”, substitute “that the draft statement is in accordance with the EIS guidelines”.

**243 Sections 104 and 105**

Repeal the sections, substitute:

### **104 Finalising environmental impact statement**

- (1) After the end of the period specified in the invitation to comment under section 103, the designated proponent must finalise the draft environmental impact statement.
- (2) The finalised statement must:
  - (a) take account of any comments received within the period for comment; and
  - (b) contain a summary of any such comments and how those comments have been addressed.
- (3) As soon as practicable after finalising the draft statement, the designated proponent must give the Minister:
  - (a) the finalised statement; and
  - (b) either:
    - (i) a copy of any comments received within the period for comment; or
    - (ii) if no comments were received within that period—a written statement to that effect.
- (4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised statement in accordance with the regulations.

### **105 Recommendation report**

- (1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:
  - (a) whether the taking of the action should be approved under Part 9; and
  - (b) if approval is recommended, any conditions that should be attached to the approval.
- (2) The recommendation report must be given to the Minister after the Minister receives the finalised environmental impact statement under section 104 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

**244 Subsections 130(1) to (1E)**

Repeal the subsections, substitute:

*Basic rule*

- (1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.
- (1A) The Minister must make the decision within the relevant period specified in subsection (1B) that relates to the controlled action, or such longer period as the Minister specifies in writing.
- (1B) The *relevant period*, in relation to a controlled action, is as follows:
  - (a) if the action is the subject of an assessment report—the period of 30 business days beginning on the first business day after the Minister receives the assessment report;
  - (b) if Division 3A of Part 8 (assessment on referral information) applies to the action—the period of 20 business days beginning on the first business day after the Minister receives the finalised recommendation report under subsection 93(5);
  - (c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires;
  - (d) if Division 5 (public environment reports) or Division 6 (environmental impact statements) of Part 8 applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the finalised public environment report or the finalised environmental impact statement, as the case requires;
  - (e) if a commission has conducted an inquiry relating to the action—the period of 40 business days beginning on the first business day after the Minister receives the report of the commission.

**245 Paragraph 130(2)(c)**

Omit “processes); or”, substitute “processes).”.

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**246 Paragraphs 130(2)(d), (e) and (f)**

Repeal the paragraphs.

**247 Subsection 130(3)**

Repeal the subsection.

**248 Subsection 130(4)**

Omit “paragraph (1)(a) or (b)”, substitute “subsection (1A)”.

**249 Subsection 130(5)**

Omit “subsection (1)”, substitute “subsection (1B)”.

**250 Subsection 131(1)**

After “approve”, insert “, for the purposes of a controlling provision,”.

**251 After section 131**

Insert:

**131AA Inviting comments before decision from person proposing to take action and designated proponent**

- (1) Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she must:
  - (a) inform the person proposing to take the action, and the designated proponent of the action (if the designated proponent is not the person proposing to take the action), of:
    - (i) the decision the Minister proposes to make; and
    - (ii) if the Minister proposes to approve the taking of the action—any conditions the Minister proposes to attach to the approval; and
  - (b) invite each person informed under paragraph (a) to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.
- (2) If the Minister proposes not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must provide to each person informed under paragraph (1)(a), with the invitation given under paragraph (1)(b):

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- (a) a copy of whichever of the following documents applies to the action:
    - (i) an assessment report;
    - (ii) a finalised recommendation report given to the Minister under subsection 93(5);
    - (iii) a recommendation report given to the Minister under section 95C, 100 or 105; and
  - (b) any information relating to economic and social matters that the Minister has considered; and
  - (c) any information relating to the history of a person in relation to environmental matters that the Minister has considered under subsection 136(4); and
  - (d) a copy of any document, or part of a document, containing information of a kind referred to in paragraph 136(2)(e) that the Minister has considered.
- (3) The Minister is not required to provide under subsection (2):
- (a) information that is in the public domain; or
  - (b) a copy of so much of a document as is in the public domain; or
  - (c) in the case of information referred to in paragraph (2)(b) or (c)—any conclusions or recommendations relating to that information included in documents or other material prepared by the Secretary for the Minister.
- (4) The Minister must not provide under subsection (2):
- (a) a copy of so much of a document as:
    - (i) is an exempt document under the *Freedom of Information Act 1982* on the grounds of the security of the Commonwealth or its providing advice to the Minister; or
    - (ii) the Minister is satisfied contains information that is commercial-in-confidence; or
  - (b) information that:
    - (i) is of such a nature that its inclusion in a document would cause that document to be an exempt document of the kind referred to in subparagraph (a)(i); or
    - (ii) the Minister is satisfied is commercial-in-confidence.
-

- (5) The Minister must not be satisfied that information (including information in a document) is commercial-in-confidence unless a person demonstrates to the Minister that:
  - (a) release of the information would cause competitive detriment to the person; and
  - (b) the information is not in the public domain; and
  - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
  - (d) the information is not readily discoverable.
- (6) In deciding whether or not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must take into account any relevant comments given to the Minister in response to an invitation given under paragraph (1)(b).
- (7) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to:
  - (a) the Minister's decision under section 133 whether or not to approve, for the purposes of a controlling provision, the taking of the action; and
  - (b) if the decision is to approve, for the purposes of a controlling provision, the taking of the action, and the Minister decides, under section 134, to attach conditions to the approval—the Minister's decision under section 134 to attach those conditions to the approval.

### **131A Inviting public comment before decision**

Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she may publish on the Internet:

- (a) the proposed decision and, if the proposed decision is to approve the taking of the action, any conditions that the Minister proposes to attach to the approval; and
- (b) an invitation for anyone to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

### **252 At the end of section 132**

Add:

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- ; (d) if:
- (i) the action is to be taken in a State or self-governing Territory; and
  - (ii) a controlling provision for the action is in Division 1 of Part 3 (about matters of national environmental significance); and
  - (iii) the relevant impacts of the action have been assessed under a law of the State or Territory;  
the appropriate Minister of that State or Territory;
  - (e) any other person the Minister considers appropriate.

## **253 After section 132**

Insert:

### **132A Requesting notice from appropriate State or Territory Minister about certain actions**

- (1) This section applies to an action that is to be taken in a State or self-governing Territory only if the action:
- (a) is to be taken by a person for the purposes of trade or commerce:
    - (i) between Australia and another country; or
    - (ii) between 2 States; or
    - (iii) between a State and a Territory; or
    - (iv) between 2 Territories; or
  - (b) is to be taken by a constitutional corporation; or
  - (c) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

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

- (2) However, this section does not apply to an action if:
- (a) the action:
    - (i) is a nuclear action; or
    - (ii) is to be taken entirely in a Commonwealth marine area;  
or
    - (iii) is to be taken entirely on Commonwealth land; or

- (iv) is to be taken by the Commonwealth or a Commonwealth agency; and
  - (b) the relevant impacts of the action have been assessed under Part 8.
- (3) Before the Minister (the *Environment Minister*) decides whether or not to approve for the purposes of a controlling provision the taking of the action, and what conditions (if any) to attach to an approval, the Environment Minister may request the appropriate Minister of the State or Territory to give the Environment Minister a notice stating the method that has been used to assess the certain and likely impacts of the action on things other than matters protected by the controlling provisions for the action.

**254 Subsection 133(1)**

Omit “an assessment report”, substitute “the assessment documentation”.

**255 After subsection 133(1)**

Insert:

- (1A) If the referral of the proposal to take the action included alternative proposals relating to any of the matters referred to in subsection 72(3), the Minister may approve, for the purposes of subsection (1), one or more of the alternative proposals in relation to the taking of the action.

**256 Paragraph 133(2)(b)**

After “action”, insert “(including any alternative proposals approved under subsection (1A))”.

**257 Paragraph 133(2)(c)**

Omit “who may take the action”, substitute “to whom the approval is granted”.

**258 Paragraph 133(2)(f)**

Omit “any”, substitute “the”.

**259 At the end of subsection 133(2)**

Add:

Note: The period for which the approval has effect may be extended. See Division 5.

**260 After subsection 133(2)**

Insert:

*Persons who may take action covered by approval*

- (2A) An approval granted under this section is an approval of the taking of the action specified in the approval by any of the following persons:
- (a) the holder of the approval;
  - (b) a person who is authorised, permitted or requested by the holder of the approval, or by another person with the consent or agreement of the holder of the approval, to take the action.

**261 Paragraph 133(3)(a)**

After “the person”, insert “named in the approval under paragraph 133(2)(c)”.

**262 Subsections 133(5) and (6)**

Repeal the subsections.

**263 At the end of section 133**

Add:

*Definition*

- (8) In this section:

***assessment documentation***, in relation to a controlled action, means:

- (a) if the action is the subject of an assessment report—that report; or
- (b) if Division 3A of Part 8 (assessment on referral information) applies to the action:
  - (i) the referral of the proposal to take the action; and
  - (ii) the finalised recommendation report relating to the action given to the Minister under subsection 93(5); or
- (c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:

- (i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
- (ii) the recommendation report relating to the action given to the Minister under section 95C; or
- (d) if Division 5 of Part 8 (public environment reports) applies to the action:
  - (i) the finalised public environment report relating to the action given to the Minister under section 99; and
  - (ii) the recommendation report relating to the action given to the Minister under section 100; or
- (e) if Division 6 of Part 8 (environmental impact statements) applies to the action:
  - (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
  - (ii) the recommendation report relating to the action given to the Minister under section 105.

#### **264 Before subsection 134(1)**

Insert:

*Condition to inform persons taking action of conditions attached to approval*

- (1A) An approval of the taking of an action by a person (the ***first person***) is subject to the condition that, if the first person authorises, permits or requests another person to undertake any part of the action, the first person must take all reasonable steps to ensure:
- (a) that the other person is informed of any condition attached to the approval that restricts or regulates the way in which that part of the action may be taken; and
  - (b) that the other person complies with any such condition.

For the purposes of this Chapter, the condition imposed by this subsection is attached to the approval.

Note: The heading to section 134 is replaced by the heading “**Conditions of approval**”.

#### **265 Paragraph 134(1)(a)**

After “effect”, insert “(whether or not the protection is protection from the action)”.

**266 Before paragraph 134(3)(a)**

Insert:

- (aa) conditions requiring specified activities to be undertaken for:
  - (i) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or
  - (ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage may or will be, or has been, caused by the action); and
- (ab) conditions requiring a specified financial contribution to be made to a person for the purpose of supporting activities of a kind mentioned in paragraph (aa); and

Note: The heading to subsection 134(3) is replaced by the heading “*Examples of kinds of conditions that may be attached*”.

**267 Paragraph 134(3)(a)**

Omit “given by the person”, substitute “given by the holder of the approval”.

**268 Subparagraph 134(3)(a)(iii)**

Omit “the person”, substitute “a person”.

**269 Paragraph 134(3)(b)**

Omit “the person” (first occurring), substitute “the holder of the approval”.

**270 Paragraph 134(3)(b)**

Omit “the person” (second occurring), substitute “the holder”.

**271 Paragraph 134(3)(c)**

Omit “the person”, substitute “a person”.

**272 Paragraph 134(3)(d)**

Omit “the person”, substitute “any person”.



**273 After paragraph 134(3)(g)**

Insert:

- ; and (h) conditions relating to any alternative proposals in relation to the taking of the action covered by the approval (as permitted by subsection 133(1A)).

**274 After subsection 134(3)**

Insert:

*Certain conditions require consent of holder of approval*

- (3A) The following kinds of condition cannot be attached to the approval of an action unless the holder of the approval has consented to the attachment of the condition:
  - (a) a condition referred to in paragraph (3)(aa), if the activities specified in the condition are not reasonably related to the action;
  - (b) a condition referred to in paragraph (3)(ab).
- (3B) If the holder of the approval has given consent, for the purposes of subsection (3A), to the attachment of a condition:
  - (a) the holder cannot withdraw that consent after the condition has been attached to the approval; and
  - (b) any person to whom the approval is later transferred under section 145B is taken to have consented to the attachment of the condition, and cannot withdraw that consent.

*Conditions attached under paragraph (3)(c)*

- (3C) A condition attached to an approval under paragraph (3)(c) may require a person taking the action to comply with conditions specified in an instrument of a kind referred to in that paragraph:
  - (a) as in force at a particular time; or
  - (b) as is in force or existing from time to time;even if the instrument does not yet exist at the time the approval takes effect.

**275 Paragraph 134(4)(a)**

After “imposed”, insert “, or the Minister considers are likely to be imposed,”.

**276 Paragraph 134(4)(b)**

Omit “the person”, substitute “a person”.

**277 After subsection 134(4)**

Insert:

*Effect of conditions requiring compliance with conditions specified in another instrument*

(4A) If:

- (a) a condition (the *principal condition*) attached to an approval under paragraph (3)(c) requires a person taking the action to comply with conditions (the *other conditions*) specified in an instrument of a kind referred to in that paragraph; and
- (b) the other conditions are in excess of the power conferred by subsection (1);

the principal condition is taken to require the person to comply with the other conditions only to the extent that they are not in excess of that power.

**278 At the end of Subdivision A of Division 1 of Part 9**

Add:

**135A Publication of recommendation reports**

- (1) This section applies in relation to the following reports:
  - (a) a finalised recommendation report given to the Minister under subsection 93(5);
  - (b) a recommendation report given to the Minister under section 95C, 100 or 105.
- (2) Subject to subsections (3) and (4), the Secretary must provide a copy of a report to which this section applies to a person who asks for it (either at no charge or at a reasonable charge determined by the Secretary).
- (3) The Secretary is not required to provide a copy of the report under subsection (2) to anyone until after the Minister has decided, for the purposes of each controlling provision, whether or not to approve the taking of the action concerned.

- (4) The Secretary may refuse to provide, under subsection (2), a copy of so much of the report as:
- (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of the security of the Commonwealth or its providing advice to the Minister; or
  - (b) the Secretary is satisfied is commercial-in-confidence.
- (5) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:
- (a) release of the information in that part would cause competitive detriment to the person; and
  - (b) the information in that part is not in the public domain; and
  - (c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
  - (d) the information in that part is not readily discoverable.

**279 Paragraph 136(2)(b)**

After “assessment report”, insert “(if any)”.

**280 After paragraph 136(2)(b)**

Insert:

- (ba) if Division 3A of Part 8 (assessment on referral information) applies to the action—the finalised recommendation report relating to the action given to the Minister under subsection 93(5); and
- (bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
  - (i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
  - (ii) the recommendation report relating to the action given to the Minister under section 95C; and

**281 Paragraph 136(2)(c)**

Repeal the paragraph, substitute:

- (c) if Division 5 (public environment reports) of Part 8 applies to the action:

- (i) the finalised public environment report relating to the action given to the Minister under section 99; and
- (ii) the recommendation report relating to the action given to the Minister under section 100; and
- (ca) if Division 6 (environmental impact statements) of Part 8 applies to the action:
  - (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
  - (ii) the recommendation report relating to the action given to the Minister under section 105; and

**282 Paragraph 136(2)(f)**

Omit “by another Minister”.

**283 At the end of paragraph 136(2)(f)**

Add “or 131A”.

**284 At the end of subsection 136(2)**

Add:

- ; and (g) if a notice relating to the action was given to the Minister under subsection 132A(3)—the information in the notice.

Note: The Minister must also take into account any relevant comments given to the Minister in response to an invitation under paragraph 131AA(1)(b). See subsection 131AA(6).

**285 Subsection 136(4)**

Omit all the words after “an approval,” (second occurring), substitute:

having regard to:

- (a) the person’s history in relation to environmental matters; and
- (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
- (c) if the person is a body corporate that is a subsidiary of another body or company (the *parent body*)—the history in relation to environmental matters of the parent body and its executive officers.

**286 Subsection 136(5)**

Omit “Subdivision”, substitute “Division”.

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**287 Section 139**

Before “In deciding”, insert “(1)”.

**288 At the end of section 139**

Add:

(2) If:

- (a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and
- (b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;

the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.

**289 After subsection 142(1)**

Insert:

(1A) Subsection (1) does not apply to a person who is not the holder of the approval if:

- (a) the person was not informed of the condition; and
- (b) the person could not reasonably have been expected to be aware of the condition.

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

**290 At the end of subsection 142A(4)**

Add:

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

**291 At the end of Division 2 of Part 9**

Add:

**142B Strict liability offence for breach of approval condition**

- (1) A person whose taking of an action has been approved under this Part is guilty of an offence if:

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**Part 1** Amendment of the Environment Protection and Biodiversity Conservation Act 1999

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- (a) the person takes an action or omits to take an action; and
- (b) the action or omission contravenes a condition attached to the approval.

Penalty: 60 penalty units.

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

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 3: An executive officer of a body corporate convicted of an offence against this section may also be guilty of an offence against section 495.

Note 4: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.

- (2) Subsection (1) does not apply to a person who is not the holder of the approval if:
  - (a) the person was not informed of the condition; and
  - (b) the person could not reasonably have been expected to be aware of the condition.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) is an offence of strict liability.

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

**292 Subsection 143(1)**

After “any conditions”, insert “(other than the condition referred to in subsection 134(1A))”.

**293 After paragraph 143(1)(b)**

Insert:

- (ba) all of the following conditions are satisfied:
  - (i) the action has had a significant impact on a matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;
  - (ii) the Minister is satisfied that the impact is substantially greater than the impact that was identified in assessing the action;

- (iii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or

**294 Paragraph 143(1)(c)**

Omit “the person whose taking of the action was approved”, substitute “the holder of the approval”.

**295 Paragraph 143(1)(c)**

After “or addition” (first occurring), insert “, or the Minister has extended the period for which the approval has effect under section 145D,”.

**296 Subsection 143(2)**

After “any condition”, insert “(other than the condition referred to in subsection 134(1A))”.

**297 Subsection 143(3)**

Omit all the words after “the Minister may”, substitute:

have regard to:

- (a) the person’s history in relation to environmental matters; and
- (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
- (c) if the person is a body corporate that is a subsidiary of another body or company (the *parent body*)—the history in relation to environmental matters of the parent body and its executive officers.

**298 Paragraph 143(5)(a)**

Omit “the person to whose action the approval relates”, substitute “the holder of the approval”.

**299 Subsection 143(5) (note)**

Omit “the person”, substitute “the holder”.

**300 Subsection 143(5) (note)**

Omit “the person’s”, substitute “the holder’s”.

**301 After subsection 144(2)**

Insert:

- (2A) The Minister may, by written instrument, suspend the effect of an approval under this Part for the purposes of a specified provision of Part 3 for a specified period (which must not start before the day on which the instrument is made) if:
- (a) either:
    - (i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or
    - (ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within a particular time—the Minister believes on reasonable grounds that the thing has not been done within that time; and
  - (b) the Minister is satisfied that:
    - (i) the approval would not have been granted without that condition being attached; or
    - (ii) because of the failure to comply with the requirement, the suspension is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.

### 302 Subsection 144(3)

Omit all the words after “the Minister may”, substitute:

have regard to:

- (a) the person’s history in relation to environmental matters; and
- (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
- (c) if the person is a body corporate that is a subsidiary of another body or company (the *parent body*)—the history in relation to environmental matters of the parent body and its executive officers.

### 303 Paragraph 144(5)(a)

Omit “the person to whose action the approval relates”, substitute “the holder of the approval”.

### 304 After subsection 145(2A)



Insert:

- (2B) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:
- (a) either:
    - (i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or
    - (ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within a particular time—the Minister believes on reasonable grounds that the thing has not been done within that time; and
  - (b) the Minister is satisfied that:
    - (i) the approval would not have been granted without that condition being attached; or
    - (ii) because of the failure to comply with the requirement, the revocation is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.

**305 Subsection 145(3)**

Omit all the words after “the Minister may”, substitute:

have regard to:

- (a) the person’s history in relation to environmental matters; and
- (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
- (c) if the person is a body corporate that is a subsidiary of another body or company (the *parent body*)—the history in relation to environmental matters of the parent body and its executive officers.

**306 Paragraph 145(5)(a)**

Omit “the person to whose action the approval related”, substitute “the person who was the holder of the approval”.

**307 Subsection 145A(2)**

After “the person”, insert “who was the holder of the approval”.

**308 Paragraph 145A(5)(a)**

After “the person”, insert “who was the holder of the approval”.

**309 Subsection 145A(6)**

After “the person”, insert “who was the holder of the approval”.

**310 Subsection 145A(8)(a)**

After “the person”, insert “who was the holder of the approval”.

**311 Subsection 145B(1)**

Omit “whose taking of an action has been approved”, substitute “who is the holder of an approval”.

**312 Paragraph 145B(4)(a)**

Repeal the paragraph, substitute:

- (a) whether the transferee would be a suitable person to be granted the approval, having regard to:
  - (i) the transferee’s history in relation to environmental matters; and
  - (ii) if the transferee is a body corporate—the history of its executive officers in relation to environmental matters; and
  - (iii) if the transferee is a body corporate that is a subsidiary of another body or company (the *parent body*)—the history in relation to environmental matters of the parent body and its executive officers; and

**313 At the end of Part 9**

Add:

**Division 5—Extension of period of effect of approval**

**145C Application to Minister to extend period of effect of approval**

- (1) Subject to subsection (2), the holder of an approval under this Part may apply, in writing, to the Minister to extend the period (the *approval period*) for which the approval has effect.
- (2) Subsection (1) does not apply if:

- (a) the approval has been suspended or revoked under this Part and has not been reinstated; or
  - (b) the approval has otherwise ceased to have effect.
- (3) An application under subsection (1) must include the information (if any) prescribed by the regulations.

**145D Minister must decide whether or not to extend approval period**

- (1) Within 20 business days after receiving an application under subsection 145C(1), the Minister must decide, in writing, whether or not to extend the approval period.

Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 145E.

- (2) The Minister may decide to extend the approval period only if the Minister is satisfied that the extension will not result in a substantial increase in, or substantial change in the nature of, the adverse impacts (if any) the action:
- (a) has or will have; or
  - (b) is likely to have;
- on the matter protected by each provision of Part 3 for which the approval has effect.
- (3) In considering the matter referred to in subsection (2), the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Division:
- (a) matters relevant to any matter protected by a provision of Part 3 for which the approval has effect;
  - (b) economic and social matters.
- (4) As soon as possible after deciding whether or not to extend the approval period, the Minister must:
- (a) give a copy of the decision to the holder of the approval; and
  - (b) if the decision is to extend the approval period—publish the decision in accordance with the regulations.

**145E Minister may request further information for making decision**

- (1) If the Minister believes on reasonable grounds that he or she does not have enough information to decide whether or not to extend the

approval period, the Minister may request the holder of the approval to provide specified information relevant to making the decision.

- (2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the purposes of subsection 145D(1) if it is:
- (a) on or after the day the Minister requested the information; and
  - (b) on or before the day on which the Minister receives the last of the information requested.

**314 Before section 146**

Insert:

**Subdivision A—Assessment of actions to be taken in accordance with policy, plan or program**

**315 After subsection 146(1A)**

Insert:

- (1B) The agreement must provide for:
- (a) the preparation of terms of reference for a report on the impacts to which the agreement relates; or
  - (b) all of the following:
    - (i) the preparation of draft terms of reference for a report on the impacts to which the agreement relates;
    - (ii) the publication of the draft terms of reference for public comment for a period of at least 28 days that is specified by the Minister;
    - (iii) the finalisation of the terms of reference, to the Minister's satisfaction, taking into account the comments (if any) received on the draft terms of reference.

**316 Paragraphs 146(2)(aa) to (ac)**

Repeal the paragraphs.

**317 Subsection 146(2) (note 2)**

Repeal the note, substitute:

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Note 2: If the Minister endorses a policy, plan or program embodied in a management arrangement or an authorisation process, the Minister may declare under section 33, or make a bilateral agreement declaring, that actions approved in accordance with the management arrangement or authorisation process do not need approval for the purposes of a specified provision of Part 3.

### **318 At the end of Division 1 of Part 10**

Add:

### **Subdivision B—Approval of taking of actions in accordance with endorsed policy, plan or program**

#### **146A Definition**

In this Subdivision and Subdivision C:

*endorsed policy, plan or program* means a policy, plan or program that has been endorsed by the Minister in accordance with an agreement as mentioned in paragraph 146(2)(f).

#### **146B Minister may approve taking of actions in accordance with endorsed policy, plan or program**

- (1) Subject to Subdivision C, the Minister may approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

Note: Subdivision C sets out matters that the Minister must take into account in deciding whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

- (2) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program must:
- (a) be in writing; and
  - (b) specify the action or class of actions that may be taken in accordance with the endorsed policy, plan or program; and
  - (c) specify each provision of Part 3 for which the approval has effect; and
  - (d) specify the period for which the approval has effect; and
  - (e) set out the conditions attached to the approval.
- (2A) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program may specify

the person or persons who may take the action or an action in the class of actions.

- (3) The Minister must:
- (a) give a copy of the approval to the person responsible for the adoption or implementation of the endorsed policy, plan or program; and
  - (b) provide a copy of the approval to a person who asks for it (either at no charge or for a reasonable charge determined by the Minister).
- (4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
- (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of commercial confidence; or
  - (b) the Minister believes it is in the national interest not to provide.
- The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.
- (5) An approval given under subsection (1) is not a legislative instrument.

**146C Inviting comments from other Ministers before deciding whether or not to approve taking of actions in accordance with endorsed policy, plan or program**

- (1) Before the Minister (the *Environment Minister*) decides whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program, he or she must:
- (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action or class of actions of the decision the Environment Minister proposes to make; and
  - (b) invite each Minister informed to give the Environment Minister, within 10 business days, comments on the proposed decision.
- (2) A Minister who is invited to comment may make comments:

- (a) that relate to economic and social matters relating to the action or class of actions to which the proposed decision relates; and
- (b) that may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

This does not limit the comments such a Minister may give.

**146D Effect of approval of taking of actions in accordance with endorsed policy, plan or program**

- (1) If an approval under section 146B is in force, the following provisions have effect:
  - (a) the Minister is taken to have decided under Division 2 of Part 7 that:
    - (i) each action specified in the approval under paragraph 146B(2)(b), or each action in a class of actions specified in the approval under that paragraph, is a controlled action; and
    - (ii) each provision of Part 3 specified in the approval under paragraph 146B(2)(c) is a controlling provision for each such controlled action;
  - (b) the Minister is taken to have approved under Part 9, for the purposes of each controlling provision for each controlled action, the taking of the action by any of the following:
    - (i) the person or persons (if any) specified in the approval under subsection 146B(2A) as the person or persons who may take the action;
    - (ii) any other person who may take the action in accordance with the endorsed policy, plan or program.
- (2) Parts 7 and 8 and paragraph 170A(c) do not apply in relation to an action if an approval of the taking of the action, or an approval of the taking of a class of actions that includes the action, in accordance with an endorsed policy, plan or program is in force under section 146B.
- (3) Subject to subsection (4), section 134 and Divisions 2, 3 and 4 of Part 9 apply in relation to an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b).

Note: Section 134 deals with conditions of approvals, Division 2 of Part 9 deals with compliance with conditions, Division 3 of Part 9 deals with variation of conditions and suspension and revocation of approvals and Division 4 of Part 9 deals with transfer of approvals.

- (4) Subsection 145A(4) applies in relation to a decision whether or not to reinstate an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b), as if:
- (a) the reference to Subdivision B of Division 1 of Part 9 were a reference to Subdivision C of this Division; and
  - (b) the reference to a decision whether or not to approve the taking of an action were a reference to a decision whether or not to approve, under this Subdivision, the taking of an action in accordance with an endorsed policy, plan or program.

### **Subdivision C—Considerations for approving taking of actions in accordance with endorsed policy, plan or program**

#### **146E Minister must comply with this Subdivision**

The Minister must comply with this Subdivision in deciding:

- (a) whether or not to approve, under section 146B, the taking of an action or a class of actions in accordance with an endorsed policy, plan or program; and
- (b) in the case of a decision to approve the taking of such an action or class of actions, what conditions (if any) to attach to the approval.

Note: For the meaning of *endorsed policy, plan or program*, see section 146A.

#### **146F General considerations**

- (1) The Minister must consider the following, so far as they are not inconsistent with any other requirements of this Subdivision:
  - (a) matters relevant to any matter protected by a provision of Part 3 that the Minister considers is relevant to the approval;
  - (b) economic and social matters.
- (2) In considering those matters, the Minister must take into account the principles of ecologically sustainable development.



### **146G Approvals relating to declared World Heritage properties**

If the approval relates to a declared World Heritage property, the Minister must not act inconsistently with:

- (a) Australia's obligations under the World Heritage Convention; or
- (b) the Australian World Heritage management principles; or
- (c) a plan that has been prepared for the management of the declared World Heritage property under section 316 or as described in section 321.

### **146H Approvals relating to National Heritage places**

If the approval relates to a National Heritage place, the Minister must not act inconsistently with:

- (a) the National Heritage management principles; or
- (b) an agreement to which the Commonwealth is party in relation to the National Heritage place; or
- (c) a plan that has been prepared for the management of the National Heritage place under section 324S or as described in section 324X.

### **146J Approvals relating to declared Ramsar wetlands**

If the approval relates to a declared Ramsar wetland, the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention.

### **146K Approvals relating to listed threatened species and ecological communities**

- (1) This section applies if the approval relates to a listed threatened species or a listed threatened ecological community.
- (2) The Minister must not act inconsistently with:
  - (a) Australia's obligations under:
    - (i) the Biodiversity Convention; or
    - (ii) the Apia Convention; or
    - (iii) CITES; or
  - (b) a recovery plan for the species or community or a threat abatement plan.

- (3) The Minister must have regard to any approved conservation advice for the species or community.

#### **146L Approvals relating to listed migratory species**

If the approval relates to a listed migratory species, the Minister must not act inconsistently with whichever of the following conventions or agreements because of which the species is listed:

- (a) the Bonn Convention;
- (b) CAMBA;
- (c) JAMBA;
- (d) an international agreement approved under subsection 209(4).

#### **146M No approvals relating to nuclear actions**

The Minister must not approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program if the action, or an action in the class of actions, consists of, or involves the construction or operation of, any of the following nuclear installations:

- (a) a nuclear fuel fabrication plant;
- (b) a nuclear power plant;
- (c) an enrichment plant;
- (d) a reprocessing facility.

#### **319 Subsection 152(2)**

Omit all the words after “managing the fishery”.

#### **320 Section 153**

Repeal the section, substitute:

#### **153 Minister must make declaration if he or she endorses plan or policy**

- (1) This section applies if:
- (a) the Minister makes an agreement under section 146 as required by this Division and endorses under the agreement:
    - (i) a plan of management under the *Fisheries Management Act 1991* for a fishery; or

- (ii) policies of the Australian Fisheries Management Authority for managing a fishery for which there is not a plan of management under the *Fisheries Management Act 1991*; or
  - (iii) a plan of management under the *Torres Strait Fisheries Act 1984* for a fishery; or
  - (iv) policies for managing fishing under the *Torres Strait Fisheries Act 1984*; and
- (b) the Minister accredits, under subsection 33(3) of this Act, as an accredited arrangement a management plan or regime consisting of the endorsed plan or policies.
- (2) The Minister must make a declaration under section 33 that actions approved in accordance with the accredited arrangement do not require an approval under Part 9 for the purposes of subsection 23(1), (2) or (3) or subsection 24A(1), (2), (3), (4), (5) or (6).
- Note: The declaration and accreditation will allow actions that would otherwise be prohibited by sections 23 and 24A to be taken without approval if they are taken in accordance with the accredited arrangement. See section 32.

### **321 After Division 1 of Part 11**

Insert:

## **Division 1A—Variation of proposals to take actions**

### **156A Request to vary proposal to take an action**

- (1) If:
- (a) a proposal (the *original proposal*) by a person to take an action has been referred to the Minister under Division 1 of Part 7; and
  - (b) after the referral is made, the person wishes to change the original proposal;
- the person may, subject to subsection (2), request the Minister to accept a variation (a *varied proposal*) of the original proposal.
- (2) Subsection (1) does not apply if:
- (a) the Minister has made a decision under section 74A to not accept the referral of the original proposal; or

- (b) the Minister has made a decision under section 75 that the proposed action is not a controlled action; or
  - (c) a particular manner for taking the proposed action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action; or
  - (d) the Minister has made a decision under section 133 approving or refusing to approve the taking of the proposed action; or
  - (e) the referral of the original proposal has been withdrawn under section 170C.
- (3) A request under subsection (1) must:
- (a) be made in a way prescribed by the regulations; and
  - (b) include the information prescribed by the regulations.
- (4) If a request is made under subsection (1), any provisions of this Chapter that would, apart from this subsection, have applied in relation to the original proposal cease to apply to that proposal.

Note: Provisions that have ceased to apply in relation to the original proposal under subsection (4) will start to apply to that proposal, or to the varied proposal, after the Minister has decided whether or not to accept the varied proposal. See section 156D.

### **156B Minister must decide whether or not to accept a varied proposal**

- (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal.

Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C.

- (2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. This subsection does not limit the matters the Minister may consider in deciding whether or not to accept the varied proposal.
- (3) In considering, for the purposes of subsection (2), whether or not the character of the varied proposal is substantially the same as the character of the original proposal, the Minister must have regard to the change (if any) in:

- (a) the nature of the activities proposed to be carried out in taking the action; and
- (b) the nature and extent of the impacts (if any) the action:
  - (i) has or will have; or
  - (ii) is likely to have;on the matter protected by each provision of Part 3.

**156C Minister may request further information in relation to a varied proposal**

- (1) If the Minister believes on reasonable grounds that a request under subsection 156A(1) to accept a varied proposal to take an action does not include enough information for the Minister to decide whether or not to accept the varied proposal, the Minister may request the person proposing to take the action to provide specified information relevant to making the decision.
- (2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the purposes of subsection 156B(1) if it is:
  - (a) on or after the day the Minister requested the information; and
  - (b) on or before the day on which the Minister receives the last of the information requested.

**156D Effect of Minister's decision to accept or not accept a varied proposal**

- (1) If the Minister decides to accept a varied proposal to take an action:
  - (a) any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to the varied proposal; and
  - (b) for the purpose of the application of those provisions, anything done in relation to the original proposal is taken to have been done in relation to the varied proposal.
- (2) If the Minister decides not to accept a varied proposal to take an action, any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to that proposal.

- (3) For the purpose of the application of the provisions of this Chapter in relation to the varied proposal under subsection (1), or in relation to the original proposal under subsection (2), a day is not to be counted as a business day if it is:
- (a) on or after the day the Minister received the request under subsection 156A(1) to accept the varied proposal; and
  - (b) on or before the day the Minister made the decision under subsection 156B(1).

**156E Notice of decision**

- (1) Within 10 business days after deciding under subsection 156B(1) whether or not to accept a varied proposal to take an action, the Minister must give written notice of the decision to:
- (a) the person proposing to take the action; and
  - (b) the designated proponent of the action (if the designated proponent of the action is not the person proposing to take the action).
- (2) If:
- (a) the request to accept the varied proposal related to an action that is to be taken in a State or self-governing Territory; and
  - (b) a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance); and
  - (c) the Minister decided to accept the varied proposal;
- the Minister must also, within the period referred to in subsection (1), give written notice of the decision to the appropriate Minister of the State or Territory.
- (3) If the Minister decided to accept the varied proposal, the Minister must, within the period referred to in subsection (1), publish the request to accept the varied proposal and notice of the decision in accordance with the regulations.

## **Division 1B—Change of person proposing to take action**

### **156F Change of person proposing to take action**

#### *Notice of change of person proposing to take action*

- (1) At any time:
- (a) after a proposal by a person to take an action has been referred to the Minister under Division 1 of Part 7; and
  - (b) before the Minister has approved, or refused to approve, the taking of the action under section 133;
- the person (the **first person**) proposing to take the action and another person (the **second person**) may notify the Minister, in writing, that:
- (c) the first person no longer proposes to take the action; and
  - (d) the second person proposes to take the action instead.

Note: A person who is the holder of an approval under Part 9 may transfer the approval to another person under section 145B.

#### *When notice cannot be given*

- (2) Subsection (1) does not apply if:
- (a) the Minister has made a decision under section 74A to not accept the referral of the proposal to take the action; or
  - (b) the Minister has made a decision under section 75 that the action is not a controlled action; or
  - (c) a particular manner for taking the action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action.

#### *Notice must include prescribed information*

- (3) A notice under subsection (1) must include the information (if any) prescribed by the regulations.

#### *Effect of notice*

- (4) If a notice is given to the Minister under subsection (1):
- (a) any provisions of this Chapter that, apart from this paragraph, would have applied to the first person in relation to the action cease to apply to that person and start to apply to the second person; and

- (b) for the purposes of the application of those provisions:
  - (i) the second person is taken to be named in the referral of the proposal to take the action as the person proposing to take the action; and
  - (ii) the second person is taken to have done anything the first person did in relation to the action; and
  - (iii) anything done in relation to the first person in relation to the action is taken to have been done in relation to the second person.

*Publication of notice*

- (5) Within 10 business days after receiving a notice under subsection (1), the Minister must publish a copy of the notice in accordance with the regulations.

**322 After Division 3 of Part 11**

Insert:

**Division 3A—Approval process decisions not affected by listing events that happen after section 75 decision made**

**158A Approval process decisions not affected by listing events that happen after section 75 decision made**

- (1) In this section:

*approval process decision* means any of the following decisions:

- (a) a decision under section 75 whether an action is a controlled action;
- (b) a decision under section 75 whether a provision of Part 3 is a controlling provision for an action;
- (c) a decision under section 78 in relation to a decision referred to in paragraph (a) or (b) of this definition;
- (d) a decision under section 87 on the approach for the assessment of the impacts of an action;
- (e) a decision under section 133 whether to approve an action;
- (f) a decision under section 134 to attach conditions to an approval of an action;



- (g) a decision under section 143 to revoke, vary or add to conditions attached to an approval of an action;
- (h) any other decision made under a provision of this Chapter that is specified in the regulations.

**listing event** means any of the following events:

- (a) a property becoming a declared World Heritage property;
  - (b) a change in the world heritage values of a declared World Heritage property;
  - (c) a place becoming a National Heritage place;
  - (d) a change in the National Heritage values included in the National Heritage List for a National Heritage place;
  - (e) a place becoming a Commonwealth Heritage place;
  - (f) a change in the Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place;
  - (g) a wetland becoming a declared Ramsar wetland;
  - (h) a change in the boundaries of any of the following:
    - (i) a World Heritage property;
    - (ii) a National Heritage place;
    - (iii) a Commonwealth Heritage place;
    - (iv) a declared Ramsar wetland;
  - (i) a species becoming a listed threatened species;
  - (j) an ecological community becoming a listed threatened ecological community;
  - (k) a listed threatened species or a listed threatened ecological community becoming listed in another category representing a higher degree of endangerment;
  - (l) a species becoming a listed migratory species;
  - (m) any other event of a kind specified in the regulations.
- (2) This section applies if:
- (a) the Minister has, before or after the commencement of this section, decided under section 75 (the **primary decision**) whether an action (the **relevant action**) is a controlled action (whether the decision is that the action is a controlled action, or that the action is not a controlled action); and
  - (b) at a time that is after the commencement of this section and after the primary decision was made, a listing event occurs.

- (3) The validity of the primary decision, or any other approval process decision made in relation to the relevant action before the listing event occurred, is not affected by the listing event, nor can it be revoked, varied, suspended, challenged, reviewed, set aside or called in question because of, or for reasons relating to, the listing event.
- (4) After the listing event occurs, the listing event is to be disregarded:
  - (a) in making any further approval process decision in relation to the relevant action; and
  - (b) in doing anything under this Chapter, in relation to the relevant action, because of the making of an approval process decision in relation to the relevant action (whether that approval process decision is or was made before or after the listing event occurred).
- (5) This section has effect despite any other provision of this Act and despite any other law.

**323 After paragraph 159(a) (second occurring)**

Insert:

(aa) an assessment on referral information under Division 3A;
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**324 After subsection 160(1)**

Insert:

*Minister may decide advice is not required*

- (1A) Subsection (1) does not apply in relation to an authorisation of an action if:
  - (a) the agency or employee has referred a proposal to give the authorisation to the Minister under subsection 161(1); and
  - (b) the Minister has decided under subsection 161A(1) that this Subdivision does not apply in relation to the referral or the action.

**325 Subsection 161(1)**

After “section 160”, insert “(disregarding subsection 160(1A))”.

**326 Subsection 161(2)**

After “section 160”, insert “(disregarding subsection 160(1A))”.

**327 After section 161**

Insert:

**161A Minister may decide that advice is not required**

- (1) If:
  - (a) the Minister receives a referral under subsection 161(1) of a proposal by a Commonwealth agency or employee of the Commonwealth to give an authorisation of an action; and
  - (b) the Minister is satisfied, on the basis of the information in the referral, that the action does not have, will not have or is not likely to have a significant impact on the environment;the Minister may decide, in writing, that this Subdivision does not apply in relation to the referral or the action.
- (2) If the Minister decides that this Subdivision does not apply in relation to the referral or the action, this Act (other than Divisions 2 and 3 of Part 7) applies as if the Minister had decided under Division 2 of Part 7 that the action is not a controlled action.
- (3) If the Minister decides that this Subdivision does not apply in relation to the referral or the action, the Minister must:
  - (a) give written notice of the decision to the agency or employee who referred the proposal to give an authorisation of the action; and
  - (b) publish notice of the decision in accordance with the regulations.

**161B Certain provisions of other Acts not to apply if Minister decides that advice is not required**

- (1) This section applies in relation to a provision of another Act that is expressed to apply if:
  - (a) the advice of the Minister is sought under this Subdivision in relation to a proposal to give an authorisation (however described) of an action; or
  - (b) a proposal to give an authorisation (however described) of an action is referred to the Minister under this Subdivision.

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- (2) The provision does not apply in relation to an action if:
- (a) a proposal to give an authorisation (however described) of the action has been referred to the Minister under section 161; and
  - (b) the Minister has decided under section 161A that this Subdivision does not apply in relation to the referral or the action.

Note: See, for example, subsections 94(6A) and 95(3A) of the *Airports Act 1996* and subsections 16(5) and 29(5) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

**328 Subsection 163(2)**

Omit “30 days”, substitute “30 business days”.

**329 Paragraph 163(2)(a)**

Repeal the paragraph, substitute:

- (a) a report mentioned in subsection 84(3) relating to the action; or
- (aa) a finalised recommendation report under Division 3A of Part 8 (as applied by section 162) relating to the action; or
- (ab) the documents given to the Minister under subsection 95B(1) (as applied by section 162), or the statement given to the Minister under subsection 95B(3) (as applied by section 162), as the case requires, relating to the action; or
- (ac) a finalised public environment report under Division 5 of Part 8 (as applied by section 162) relating to the action; or
- (ad) a finalised environmental impact statement under Division 6 of Part 8 (as applied by section 162) relating to the action; or

**330 Subdivision B of Division 4 of Part 11**

Repeal the Subdivision.

**331 Paragraphs 168(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) specify that one of the following is to apply in relation to the action:
  - (i) Division 3A of Part 8;
  - (ii) Division 4 of Part 8;
  - (iii) Division 5 of Part 8;

- (iv) Division 6 of Part 8;
- (v) Division 7 of Part 8;
- (vi) Subdivision A of Division 1 of Part 10; and
- (b) if it specifies that Division 3A, 4, 5 or 6 of Part 8 is to apply in relation to the action—specify the person who is taken to be the designated proponent of the action for the purposes of that Division.

**332 Subsection 168(2)**

Repeal the subsection.

**333 Paragraph 168(3)(a)**

Omit “guidelines for the content”, substitute “tailored guidelines for the preparation”.

**334 Paragraph 168(3)(b)**

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

**335 Paragraph 168(3)(c)**

Repeal the paragraph.

**336 Paragraph 168(4)(a)**

Omit “guidelines for the content”, substitute “tailored guidelines for the preparation”.

**337 Paragraph 168(4)(b)**

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

**338 Paragraph 168(4)(c)**

Repeal the paragraph.

**339 Subsection 168(6)**

Before “Division 1”, insert “Subdivision A of”.

**340 Paragraphs 168(6)(a) and (b)**

Omit “Division” (wherever occurring), substitute “Subdivision”.

**341 Subsection 169(3)**

Repeal the subsection, substitute:

*Modification of Division 4 of Part 8*

- (3) Also, if the agreement states that Division 4 of Part 8 is to apply in relation to the action, that Division applies in relation to the action as if paragraphs 95(2)(a) and (b) and 95A(3)(a), (b) and (c) merely referred to specified information relating to the action.

**342 Section 170**

Before “Division 1”, insert “Subdivision A of”.

Note: The heading to section 170 is altered by inserting “**Subdivision A of**” before “**Division 1**”.

**343 Paragraph 170(a)**

Omit “Division”, substitute “Subdivision”.

**344 After paragraph 170A(d)**

Insert:

- (da) each draft recommendation report and invitation (if any) published in the immediately preceding week under Division 3A of Part 8 (about assessment on referral information);

**345 Paragraph 170A(i)**

Repeal the paragraph, substitute:

- (i) each finalised recommendation report given to the Minister under Division 3A of Part 8 in the immediately preceding week;
- (ia) each recommendation report given to the Minister in the immediately preceding week under section 95C, 100 or 105;

**346 At the end of Division 5 of Part 11**

Add:

**170B Information critical to protecting matters of national environmental significance not to be disclosed**

- (1) The Minister may, by notice in writing to a person, direct the person not to disclose specified information when publishing a document or material as required or permitted by a specified provision of this Chapter, if the Minister considers that the

information is critical to the protection of a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance).

- (2) A provision of this Chapter that is specified in a direction under subsection (1) has effect as if it did not require or permit the publication of the information specified in the direction.
- (3) A person who is given a direction under subsection (1) must not contravene the direction.

Civil penalty: 100 penalty units.

**170BA Designated proponent may request Minister to permit commercial-in-confidence information not to be disclosed**

- (1) This section applies in relation to the assessment documentation that must be published by the designated proponent of an action to which Division 4, 5 or 6 of Part 8 applies.
- (2) The designated proponent may request the Minister, in writing, to permit the designated proponent not to publish so much of the assessment documentation relating to the action as the designated proponent considers is commercial-in-confidence.
- (3) A request under subsection (2) must include the information prescribed by the regulations.
- (4) If the Minister is satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence, the Minister may, by written notice to the designated proponent, permit the designated proponent not to publish that part of the assessment documentation.
- (5) The Minister must not be satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence unless a person demonstrates to the Minister that:
  - (a) release of the information in that part would cause competitive detriment to the person; and
  - (b) the information in that part is not in the public domain; and
  - (c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

- (d) the information in that part is not readily discoverable.
- (6) If the Minister permits the designated proponent not to publish a part of the assessment documentation that the Minister considers is commercial-in-confidence, the provision of Division 4, 5 or 6 of Part 8 that requires the designated proponent to publish the assessment documentation has effect as if it did not require the publication of that part of the assessment documentation.

(7) In this section:

**assessment documentation**, in relation to an action to which Division 4, 5 or 6 of Part 8 applies, means:

(a) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:

- (i) the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires; and
- (ii) the document prepared under paragraph 95B(1)(a) or the information referred to in subsection 95B(4), as the case requires; or

(b) if Division 5 of Part 8 (public environment reports) applies to the action:

- (i) the draft public environment report relating to the action given to the Minister under paragraph 98(1)(ab); and
- (ii) the finalised public environment report relating to the action given to the Minister under section 99; or

(c) if Division 6 of Part 8 (environmental impact statements) applies to the action:

- (i) the draft environmental impact statement relating to the action given to the Minister under paragraph 103(1)(ab); and
- (ii) the finalised environmental impact statement relating to the action given to the Minister under section 104.

### 347 At the end of Part 11

Add:



## **Division 6—Withdrawal of referrals**

### **170C Withdrawal of referral of proposal to take an action**

- (1) Subject to subsection (2), a person who:
  - (a) has referred a proposal to take an action to the Minister under section 68; or
  - (b) is named as the person proposing to take an action in a proposal that is referred to the Minister under section 69 or 71;may withdraw the referral, by written notice to the Minister.
- (2) The referral cannot be withdrawn after the Minister has decided, under Part 9, whether or not to approve the taking of the action.
- (3) If the Minister receives a notice withdrawing the referral, the Minister must publish notice of the withdrawal of the referral in accordance with the regulations.
- (4) If the referral is withdrawn, the provisions of this Chapter that would, apart from this subsection, have applied to the action cease to apply to the action.

### **348 Before Part 12 in Chapter 5**

Insert:

## **Part 11A—Interpretation**

### **170D References to business days are references to Canberra business days**

A reference in this Chapter to a business day is a reference to a day that is a business day (as defined in section 528) in Canberra.

### **349 Section 172**

Repeal the section, substitute:

**172 Inventories of listed threatened species etc. on Commonwealth land**

- (1) The Minister may prepare an inventory covering an area of Commonwealth land that identifies, and states the abundance of, the listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species on the area of land if:
  - (a) the Minister is satisfied that the area of land is of importance for the conservation of biodiversity; and
  - (b) the area of land is not covered by a plan that:
    - (i) has an object (whether express or implied) of either protecting the environment or promoting the conservation of biodiversity; and
    - (ii) is in force under a law of the Commonwealth.
- (2) A Commonwealth agency must provide all reasonable assistance in connection with the preparation of an inventory if:
  - (a) the inventory is to cover an area of Commonwealth land; and
  - (b) the agency has an interest in the area of land.
- (3) For the purposes of paragraph (2)(b), a Commonwealth agency has an interest in an area of Commonwealth land if the agency:
  - (a) has a legal or equitable interest in the area; or
  - (b) occupies the area; or
  - (c) has administrative responsibilities relating to the area or to actions taken in the area.

**350 Section 173**

Repeal the section, substitute:

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

- (1) The Minister may prepare a survey covering a Commonwealth marine area that identifies, and states the extent of the range of, cetaceans, listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species in the area if:
    - (a) the Minister is satisfied that the area is of importance for the conservation of biodiversity; and
-

- (b) the area is not covered by a plan that:
  - (i) has an object (whether express or implied) of either protecting the environment or promoting the conservation of biodiversity; and
  - (ii) is in force under a law of the Commonwealth.
- (2) A Commonwealth agency must provide all reasonable assistance in connection with the preparation of a survey if:
  - (a) the survey is to cover a Commonwealth marine area; and
  - (b) the agency has an interest in the area.
- (3) For the purposes of paragraph (2)(b), a Commonwealth agency has an interest in a Commonwealth marine area if the agency:
  - (a) has a legal or equitable interest in the area; or
  - (b) occupies the area; or
  - (c) has administrative responsibilities relating to the area or to actions taken in the area.

**351 Section 175**

Repeal the section.

**352 After subsection 176(4)**

Insert:

- (4A) A bioregional plan prepared under subsection (1) or (2) is not a legislative instrument.

**353 Subsection 179(6)**

Repeal the subsection, substitute:

- (6) A native species is eligible to be included in the *conservation dependent* category at a particular time if, at that time:
  - (a) the species is the focus of a specific conservation program the cessation of which would result in the species becoming vulnerable, endangered or critically endangered; or
  - (b) the following subparagraphs are satisfied:
    - (i) the species is a species of fish;
    - (ii) the species is the focus of a plan of management that provides for management actions necessary to stop the decline of, and support the recovery of, the species so

that its chances of long term survival in nature are maximised;

- (iii) the plan of management is in force under a law of the Commonwealth or of a State or Territory;
- (iv) cessation of the plan of management would adversely affect the conservation status of the species.

(7) In subsection (6):

*fish* includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

**354 Subsection 184(1)**

Omit “instrument published in the *Gazette*”, substitute “legislative instrument”.

**355 Paragraph 184(1)(a)**

After “list”, insert “in accordance with Subdivision AA”.

**356 After paragraph 184(1)(a)**

Insert:

- (aa) including items in the list in accordance with subsection 186(3), (4) or (5); or

**357 Paragraph 184(1)(c)**

After “list” (last occurring), insert “in accordance with Subdivision AA”.

**358 Subsections 184(2), (3), (4) and (5)**

Repeal the subsections, substitute:

- (2) Part 6 of the *Legislative Instruments Act 2003* does not apply to an instrument made under subsection (1).

**359 Section 185**

Repeal the section.

**360 Subsections 186(1) and (2)**

Repeal the subsections, substitute:

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*Including native species in a category*

- (1) Subject to subsections (3), (4) and (5), the Minister must not include (whether as a result of a transfer or otherwise) a native species in a particular category unless satisfied that the native species is eligible to be included in that category.
- (2) In deciding whether to include a native species in a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:
  - (a) whether the native species is eligible to be included in that category; or
  - (b) the effect that including the native species in that category could have on the survival of the native species.

*Deleting native species from a category*

- (2A) The Minister must not delete (whether as a result of a transfer or otherwise) a native species from a particular category unless satisfied that:
  - (a) the native species is no longer eligible to be included in that category; or
  - (b) the inclusion of the native species in that category is not contributing, or will not contribute, to the survival of the native species.
- (2B) In deciding whether to delete a native species from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:
  - (a) whether the native species is eligible to be included in that category; or
  - (b) the effect that the inclusion of the native species in that category is having, or could have, on the survival of the native species.

Note: The following heading to subsection 186(3) is inserted “*Including similar species to an eligible species*”.

**361 Section 187**

Repeal the section, substitute:

### **187 Amending list of ecological communities**

*Including ecological communities in a category*

- (1) The Minister must not include (whether as a result of a transfer or otherwise) an ecological community in a particular category unless satisfied that the ecological community is eligible to be included in that category.
- (2) In deciding whether to include an ecological community in a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:
  - (a) whether the ecological community is eligible to be included in that category; or
  - (b) the effect that including the ecological community in that category could have on the survival of the ecological community.

*Deleting ecological communities from a category*

- (3) The Minister must not delete (whether as a result of a transfer or otherwise) an ecological community from a particular category unless satisfied that:
  - (a) the ecological community is no longer eligible to be included in that category; or
  - (b) the inclusion of the ecological community in that category is not contributing, or will not contribute, to the survival of the ecological community.
- (4) In deciding whether to delete an ecological community from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:
  - (a) whether the ecological community is eligible to be included in that category; or
  - (b) the effect that the inclusion of the ecological community in that category is having, or could have, on the survival of the ecological community.

### **362 Subsection 189(1)**

Repeal the subsection, substitute:

(1) In deciding whether to make an amendment covered by paragraph 184(1)(aa), (b) or (d), the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the proposed amendment.

(1A) Subsection (1) has effect subject to section 192.

(1B) If advice from the Scientific Committee for the purposes of subsection (1) is to the effect that a particular native species, or a particular ecological community, is eligible to be included in the relevant list in a particular category, the advice must also contain:

- (a) a statement that sets out:
  - (i) the grounds on which the species or community is eligible to be included in the category; and
  - (ii) the main factors that are the cause of it being so eligible; and
- (b) either:
  - (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or
  - (ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community; and
- (c) a recommendation on the question whether there should be a recovery plan for the species or community.

### **363 Subsection 189(3)**

Repeal the subsection, substitute:

- (3) In preparing advice for a proposed amendment to delete an item:
- (a) included in a category of a list referred to in section 178 or 181; and
  - (b) that had not been included in that category in accordance with subsection 186(3), (4) or (5);

the only matters the Scientific Committee may consider are matters relating to:

- (c) the survival of the native species or ecological community concerned; or
- (d) the effect that the inclusion in the list of the native species or ecological community concerned is having, or could have, on the survival of that native species or ecological community.

(3A) In preparing advice for a proposed amendment to:

- (a) include a native species in a category of the list referred to in section 178 in accordance with subsection 186(3), (4) or (5) because of the species' resemblance to another species; or
- (b) delete a native species from a category of the list referred to in section 178 that had been included in that category in accordance with subsection 186(3), (4) or (5) because of the species' resemblance to another species;

the only matters the Scientific Committee may consider are matters relating to:

- (c) the survival of either species; or
- (d) the effect that the inclusion in the list of the first-mentioned species is having, or could have, on the survival of either species.

### **364 Subsections 189(4), (5) and (6)**

Repeal the subsections.

### **365 After section 189**

Insert:

#### **189A Certain information may be kept confidential**

- (1) This section applies if the Minister considers that the survival of a native species or ecological community could be threatened by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:
  - (a) the precise location of the species in the wild, or of the community;
  - (b) any other information about the species or community.
- (2) It is sufficient compliance with this Act if only a general description of the location of the species or community is included in an instrument or other document created for the purposes of this Act.

#### **189B Disclosure of Scientific Committee's assessments and advice**

- (1) A member of the Scientific Committee has a duty not to disclose the following to a person other than the Minister, an employee in
-



the Department whose duties relate to the Committee or another member of the Committee:

- (a) an assessment under section 194N in relation to whether an item is eligible for inclusion (whether as a result of a transfer or otherwise) in a list referred to in section 178, 181 or 183, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;
  - (b) advice under section 189 concerning an amendment covered by subsection 189(1) or any information relating to the advice.
- (2) However:
- (a) the duty not to disclose a thing described in paragraph (1)(a) in relation to an item does not exist after:
    - (i) registration under Division 3 of Part 4 of the *Legislative Instruments Act 2003* of an instrument made under section 189 in relation to the item; or
    - (ii) the Minister decides under paragraph 194Q(1)(b) not to include the item in a list referred to in section 178, 181 or 183; and
  - (b) the duty not to disclose a thing described in paragraph (1)(b) in relation to an amendment does not exist after:
    - (i) registration under Division 3 of Part 4 of the *Legislative Instruments Act 2003* of an instrument made under section 189 relating to the amendment; or
    - (ii) the Minister decides under this Subdivision not to remove the item from a list referred to in section 178, 181 or 183.
- (3) Subsection (1) does not apply to a disclosure of particular information if:
- (a) the Chair of the Scientific Committee requests the Minister to give permission to disclose that information to a particular person (or persons within a particular group of persons); and
  - (b) the Minister gives that permission; and
  - (c) the disclosure is made to that person (or a person within that group).
- (4) After a member of the Scientific Committee has ceased under subsection (2) to have a duty not to disclose:

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- (a) an assessment under section 194N in relation to whether an item is eligible for inclusion (whether as a result of a transfer or otherwise) in a list referred to in section 178, 181 or 183; or
  - (b) advice under section 189 concerning an amendment covered by subsection 189(1);
- the member must give a copy of the assessment or advice to anyone who asks for it.
- (5) If:
- (a) a member of the Scientific Committee proposes to give a person under subsection (4):
    - (i) a copy of an assessment relating to an item concerning a native species or ecological community; or
    - (ii) a copy of advice relating to an amendment concerning a native species or ecological community; and
  - (b) the member is aware that, under section 189A, it would be sufficient compliance with this Act if the copy included only a general location of the species or community;
- the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

**366 Section 191**

Repeal the section.

**367 Section 194**

Repeal the section, substitute:

**194 Lists must be publicly available**

The Minister must ensure that:

- (a) up-to-date copies of the lists referred to in sections 178, 181 and 183 are available for free to the public on request; and
- (b) an up-to-date copy of the lists are available on the Internet.

Note: The copies of the lists made publicly available may not contain certain information kept confidential under section 189A.

**368 After Subdivision A of Division 1 of Part 13**

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Insert:

## **Subdivision AA—The nomination and listing process**

### **194A Simplified outline**

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for including an item in a list referred to in section 178, 181 or 183, or transferring an item from one category in one of those lists to another category in the list.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 194C).

The usual process involves the following steps for each assessment period for a list:

- (a) the Minister may determine conservation themes (this step is optional) (see section 194D);
- (b) the Minister invites people to nominate items for inclusion in the list referred to in section 178, 181 or 183, and gives the nominations to the Scientific Committee (see sections 194E and 194F);
- (c) the Scientific Committee prepares, and gives to the Minister, a list of items (which will mostly be items that have been nominated) that it thinks should be assessed (see sections 194G to 194J);
- (d) the Minister finalises the list of items that are to be assessed (see sections 194K and 194L);
- (e) the Scientific Committee invites people to make comments about the item in the finalised list (see section 194M);

- (f) the Scientific Committee assesses the item in the finalised list, and gives the assessments to the Minister (see sections 194N and 194P);
- (g) the Minister decides whether an item that has been assessed should be included in the list referred to in section 178, 181 or 183 (see section 194Q).

The steps mentioned in paragraphs (a) to (d) will generally be completed before the start of the assessment period.

### 194B Definitions

- (1) In this Subdivision:

*assessment period* has the meaning given by subsection 194C(1).

*eligible for assessment consideration*, in relation to an assessment period, has the meaning given by subsection 194G(3).

*finalised priority assessment list* for an assessment period has the meaning given by subsection 194K(4).

*includes* has a meaning affected by subsection (2).

*proposed priority assessment list* for an assessment period has the meaning given by subsection 194G(1).

*Subdivision A List* means a list referred to in section 178, 181 or 183.

- (2) A reference in this Subdivision to including an item in a list referred to in section 178 or 181 includes a reference to transferring the item from one category in the list to another category in the list.

### 194C Meaning of *assessment period*

- (1) For the purposes of this Subdivision, each of the following is an *assessment period* for a Subdivision A List:
- (a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph in relation to the Subdivision A List;

- (b) each period of 12 months starting on an anniversary of the day so determined.
- (2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.
- (3) A determination under paragraph (1)(a) is a legislative instrument, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the determination.

**194D Minister may determine conservation themes for an assessment period**

- (1) Before the Minister invites nominations for an assessment period for a Subdivision A List under section 194E, the Minister may determine one or more conservation themes that the Minister considers should be given priority in relation to the assessment period for the Subdivision A List.
- (2) Without limiting subsection (1), the Minister may determine as a conservation theme that priority should be given to the conservation of:
  - (a) particular groups of species; or
  - (b) particular species; or
  - (c) particular regions of Australia.
- (3) The Minister may request advice from the Scientific Committee for the purpose of making a determination under subsection (1), and may have regard to any advice the Committee provides in response to the request.
- (4) A determination under subsection (1) is a legislative instrument, but section 42 of the *Legislative Instruments Act 2003* does not apply to the determination.

**194E Minister to invite nominations for each assessment period**

- (1) Before the start of each assessment period for a Subdivision A List, the Minister must publish a notice inviting people to nominate items for inclusion in the Subdivision A List.

Note: Nominations can be for the transfer of an item already on a list covered by section 178 or 181 from one category in the list to another category in the list (see subsection 194B(2)).

- (2) A notice under subsection (1):
- (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
  - (b) must invite people to nominate, to the Minister, items for inclusion in the Subdivision A List; and
  - (c) must identify the assessment period to which the notice relates; and
  - (d) must specify a date (the *cut-off date*) by which nominations must be received, which must be at least 40 business days after the notice has been published as required by paragraph (a); and
  - (e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and
  - (f) may also include:
    - (i) information related to any conservation themes that the Minister has determined under section 194D should be given priority in relation to the assessment period for the Subdivision A List; and
    - (ii) any other information that the Minister considers appropriate.
- (3) The regulations must provide for the following:
- (a) how a notice under subsection (1) is to be published;
  - (b) the manner and form for making nominations;
  - (c) what information is to be included in a nomination.

#### **194F Minister to give nominations to Scientific Committee**

*Nominations in relation to first assessment period*

- (1) Within 30 business days after the cut-off date specified in the notice under subsection 194E(1) for the first assessment period, the Minister must give the Scientific Committee the nominations that the Minister:
- (a) had received before the end of that cut-off date; and

- (b) had not already forwarded to the Scientific Committee, under section 191 (as in force before the commencement of this section), to assess; and
- (c) had not already rejected under section 191 (as in force before the commencement of this section); and
- (d) does not reject under subsection (3).

*Nominations in relation to later assessment periods*

- (2) Within 30 business days after the cut-off date (the **current cut-off date**) specified in the notice under subsection 194E(1) for an assessment period (other than the first) for a Subdivision A List, the Minister must give the Scientific Committee the nominations that were received by the Minister in the period:
  - (a) starting immediately after the end of the cut-off date specified in the notice under subsection 194E(1) for the immediately preceding assessment period for the Subdivision A List; and
  - (b) ending at the end of the current cut-off date for the Subdivision A List;other than any such nominations that the Minister has rejected under subsection (3).

*Minister may reject nominations*

- (3) The Minister may, in writing, reject a nomination if the Minister considers that:
  - (a) the nomination is vexatious, frivolous or not made in good faith; or
  - (b) the Minister considers that regulations referred to in paragraph 194E(3)(b) or (c) have not been complied with in relation to the nomination.
- (4) If a nomination is rejected under paragraph (3)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

*Definition*

- (5) In this section:

***nomination*** means a nomination of an item for inclusion in a Subdivision A List.

**194G Scientific Committee to prepare proposed priority assessment list**

- (1) Within 40 business days after the Scientific Committee receives the nominations as required by subsection 194F(1) in relation to an assessment period for a Subdivision A List, the Committee must prepare and give to the Minister a list (the ***proposed priority assessment list***) for the assessment period for the Subdivision A List.
- (2) The proposed priority assessment list for the Subdivision A List is to consist of such of the items that are eligible for assessment consideration in relation to the assessment period for the Subdivision A List as the Scientific Committee considers it appropriate to include in the proposed priority assessment list, having regard to:
  - (a) any conservation themes determined by the Minister under section 194D in relation to the assessment period for the Subdivision A List; and
  - (b) the Committee's own views about what should be given priority in relation to the assessment period for the Subdivision A List; and
  - (c) the Committee's capacity to make assessments under this Division while still performing its other functions; and
  - (d) any other matters that the Committee considers appropriate.
- (3) An item is ***eligible for assessment consideration*** in relation to the assessment period for a Subdivision A List if:
  - (a) the item has been nominated by a nomination referred to in subsection (1); or
  - (b) the Committee itself wishes to nominate the item for inclusion in the Subdivision A List; or
  - (c) the item was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) for the Subdivision A List but was not included in the finalised priority assessment list for that assessment period for the Subdivision A List.



- (4) Without limiting the generality of the Scientific Committee's discretion under subsection (2), the Committee does not have to include in the proposed priority assessment list an item that has been nominated if the Committee considers that:
  - (a) if the item is not on the Subdivision A List concerned—it is unlikely that the item is eligible to be included in the Subdivision A List; or
  - (b) if the nomination is for the transfer of the item to another category in the Subdivision A List concerned—it is unlikely that the item is eligible to be included in that other category of the Subdivision A List.
- (5) For the purposes of subsection (4), the Committee is not required to have regard to any information beyond the information that was included in the nomination.
- (6) The proposed priority assessment list is not a legislative instrument.

#### **194H Matters to be included in proposed priority assessment list**

- (1) The proposed priority assessment list for an assessment period for a Subdivision A List is to include, for each item in the proposed priority assessment list:
  - (a) a description of the item; and
  - (b) an assessment completion time; and
  - (c) any other information required by the regulations.
- (2) The assessment completion time for an item must be either:
  - (a) a time that is at or before the end of the assessment period for the proposed priority assessment list; or
  - (b) if the Scientific Committee considers it likely that making an assessment in relation to the item will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period for the proposed priority assessment list).

#### **194J Statement to be given to Minister with proposed priority assessment list**

- (1) When the Scientific Committee gives the Minister the proposed priority assessment list for an assessment period for a Subdivision

A List, the Committee must also give the Minister a statement setting out such information as the Committee considers appropriate relating to:

- (a) for each item that is included in the proposed priority assessment list—why the Committee included the item in the list; and
  - (b) for each item that is not included in the proposed priority assessment list but that was eligible for assessment consideration because of paragraph 194G(3)(a) or (c)—why the Committee did not include the item in the proposed priority assessment list.
- (2) The statement must also identify, as items nominated by the Scientific Committee, any items that are included in the proposed priority assessment list because the Committee itself wishes to nominate them (see paragraph 194G(3)(b)).

#### **194K The finalised priority assessment list**

- (1) Within 20 business days after the Minister, under section 194G, receives the proposed priority assessment list for an assessment period for a Subdivision A List, the Minister may, in writing, make changes to the proposed priority assessment list as mentioned in subsection (2).
- (2) The changes the Minister may make are as follows:
  - (a) including an item in the proposed priority assessment list (and also including the matters referred to in subsection 194H(1));
  - (b) omitting an item from the proposed priority assessment list (and also omitting the matters referred to in subsection 194H(1));
  - (c) changing the assessment completion time for an item in the proposed priority assessment list;
  - (d) any other changes of a kind permitted by the regulations.
- (3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.
- (4) At the end of the period of 20 business days referred to in subsection (1), the proposed priority assessment list, as changed (if

at all) by the Minister, becomes the *finalised priority assessment list* for the assessment period for the Subdivision A List.

- (5) The Minister must notify the Scientific Committee of all changes that the Minister makes to the proposed priority assessment list.
- (6) The finalised priority assessment list is not a legislative instrument.

#### **194L Publication of finalised priority assessment list**

- (1) The Scientific Committee must publish the finalised priority assessment list for an assessment period for a Subdivision A List on the Internet.
- (2) The Scientific Committee must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

#### **194M Scientific Committee to invite comments on items in finalised priority assessment list**

- (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must publish a notice inviting people to make comments on the item.
- (2) The Scientific Committee may, under subsection (1), publish a single notice relating to all of the items on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the items.
- (3) A notice under subsection (1), in relation to an item or items:
  - (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
  - (b) must identify the item or items to which the notice relates; and
  - (c) if the Subdivision A List is the list referred to in section 178 or 181—must identify the category of the Subdivision A List in which the item or items are proposed to be included; and
  - (d) must invite people to make comments, to the Scientific Committee, setting out:
    - (i) if the Subdivision A List is the list referred to in section 178 or 181—views about whether the item or

- items are eligible for inclusion in that category of the Subdivision A List; and
  - (ii) if the Subdivision A List is the list referred to in section 183—views whether the item or items are eligible for inclusion in the Subdivision A List; and
  - (iii) reasons supporting those views; and
  - (e) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
  - (f) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
  - (g) may also invite people to comment on other matters that the Scientific Committee considers appropriate; and
  - (h) may also include any other information that the Scientific Committee considers appropriate.
- (4) The regulations must provide for the following:
- (a) how a notice under subsection (1) is to be published;
  - (b) the manner and form for making comments.

**194N Scientific Committee to assess items on finalised priority assessment list and give assessments to Minister**

- (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P):
- (a) make a written assessment of:
    - (i) whether the item is eligible for inclusion in the Subdivision A List; and
    - (ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which the item is eligible to be included; and
  - (b) give to the Minister:
    - (i) the written assessment (or a copy of it); and
    - (ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).

- (2) In making an assessment in relation to a place, the Scientific Committee, subject to subsections (3) and (4):
  - (a) must take into account the comments the Committee receives in response to the notice under subsection 194M(1) in relation to the item; and
  - (b) may seek, and have regard to, information or advice from any source.
- (3) The Scientific Committee is not required to take a comment referred to in paragraph (2)(a) into account if:
  - (a) the Committee does not receive the comment until after the cut-off date specified in the notice under subsection 194M(1) in relation to the item; or
  - (b) the Committee considers that regulations referred to in paragraph 194M(4)(b) have not been complied with in relation to the comment.
- (4) In making an assessment, the only matters the Scientific Committee may consider are matters relating to:
  - (a) whether the item is eligible for inclusion in the Subdivision A List; or
  - (b) the effect that including the item in that List could have on the survival of the native species or ecological community concerned.

#### **194P Time by which assessments to be provided to Minister**

- (1) Subsection 194N(1) must be complied with, in relation to an item included in the finalised priority assessment list for an assessment period for a Subdivision A List, by the assessment completion time specified in the finalised priority assessment list for the item, or by that time as extended under this section.
- (2) The Scientific Committee may request the Minister to extend the assessment completion time (or that time as previously extended) if the Committee considers that it needs more time to make the assessment.
- (3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers

appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.

- (4) An extension under subsection (3) must be made in writing.
- (5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

#### **194Q Decision about inclusion of an item in the Subdivision A List**

*Minister to decide whether or not to include item*

- (1) After receiving from the Scientific Committee an assessment under section 194N of an item, the Minister must:
  - (a) include the item in the Subdivision A List concerned; or
  - (b) in writing, decide not to include the item in the Subdivision A List concerned.

Note 1: Under this subsection the Minister can transfer an item already on a Subdivision A List to a different category in the List (see subsection 194B(1)).

Note 2: Sections 186, 187 and 188 contain rules about including items in a Subdivision A List.

- (2) If, under subsection (1), the Minister transfers an item to a category of the Subdivision A List, the Minister must at the same time delete the item from the category in which it was included before the transfer.
- (3) Subject to subsection (4), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
- (4) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
- (5) Particulars of an extension or further extension under subsection (4) must be published on the Internet and in any other way required by regulations.
- (6) For the purpose of deciding what action to take under subsection (1) in relation to the item:
  - (a) the Minister must have regard to:
    - (i) the Scientific Committee's assessment of the item; and

- (ii) the comments (if any), a copy of which were given to the Minister under subsection 194N(1) with the assessment; and
- (b) the Minister may seek, and have regard to, information or advice from any source.

*Additional requirements if Minister decides to include place*

- (7) If the Minister includes the item in the Subdivision A List, he or she must, within a reasonable time:
  - (a) if the item was nominated by a person in response to a notice under subsection 194E(1)—advise the person that the item has been included in the Subdivision A List; and
  - (b) publish a copy of the instrument referred to in paragraph (1)(a) on the Internet; and
  - (c) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.

*Additional requirements if Minister decides not to include item*

- (8) If the Minister decides not to include the item in the Subdivision A List, the Minister must, within 10 business days after making the decision:
  - (a) publish the decision on the Internet; and
  - (b) if the item was nominated by a person in response to a notice under subsection 194E(1)—advise the person of the decision, and of the reasons for the decision.

#### **194R Scientific Committee may obtain advice**

In performing its functions under this Subdivision, the Scientific Committee may obtain advice from a person with expertise relevant to the inclusion of an item in a Subdivision A List.

#### **194S Co-ordination with Australian Heritage Council—Committee undertaking assessment**

- (1) This section applies if:
  - (a) the Scientific Committee undertakes an assessment under this Subdivision; and

- (b) before giving the assessment to the Minister, the Committee becomes aware that:
  - (i) the Australian Heritage Council is undertaking, or has undertaken, an assessment of a place under Subdivision BA or BB of Division 1A of Part 15 or under Subdivision BA or BB of Division 3A of Part 15; and
  - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) A member of the Scientific Committee may discuss the matter with a member of the Australian Heritage Council.
- (3) Before the Scientific Committee gives an assessment to the Minister under this Subdivision, the Committee must comply with subsection (4) or (6).
- (4) If the Australian Heritage Council has not yet given the Minister an assessment that deals with that matter, the Scientific Committee must:
  - (a) give the Council a copy of the assessment that the Committee proposes to give to the Minister; and
  - (b) invite the Council to give the Committee its comments in relation to that matter; and
  - (c) take into account, in finalising the assessment that the Committee gives the Minister, any comments that the Council makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.
- (5) If the Scientific Committee gives the Australian Heritage Council a copy of a proposed assessment under paragraph (4)(a), the Committee must also give the Council a copy of the assessment that the Committee gives the Minister.
- (6) If:
  - (a) the Australian Heritage Council has already given the Minister an assessment that deals with that matter; and
  - (b) the Scientific Committee has been given a copy of that assessment;the Committee must take that assessment into account in finalising the assessment that the Committee gives the Minister.



- (7) If, under section 324JR, 324JS, 341JQ or 341JR, the Australian Heritage Council gives the Scientific Committee a proposed assessment, or an assessment, that deals with a particular matter because the Committee is undertaking an assessment that deals with that matter, a member of the Committee may discuss that matter with a member of the Council.
- (8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 189B.

**194T Co-ordination with Australian Heritage Council—Committee given assessment to Minister**

- (1) This section applies if:
  - (a) the Scientific Committee has given to the Minister an assessment under this Subdivision; and
  - (b) the Committee is or becomes aware that:
    - (i) the Australian Heritage Council is undertaking an assessment of a place under Subdivision BA or BB of Division 1A of Part 15 or under Subdivision BA or BB of Division 3A of Part 15; and
    - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) The Scientific Committee must, within 7 days after giving the assessment to the Minister, or becoming aware, as referred to in paragraph (1)(b):
  - (a) ensure the Australian Heritage Council is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
  - (b) give the Council a copy of the assessment.
- (3) A member of the Scientific Committee may discuss the matter with a member of the Australian Heritage Council.
- (4) Subsections (2) and (3) have effect despite section 189B.

**369 Paragraph 196(1)(b)**

Omit “native”.

**370 Subsection 196(2)**

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Omit “paragraph (1)(d)”, substitute “paragraphs (1)(c) and (d)”.

Note: The heading to section 196 is altered by omitting “**Recklessly killing**” and substituting “**Killing**”.

**371 Paragraph 196B(1)(a)**

Omit “native”.

**372 Subsection 196B(2)**

Omit “paragraph (1)(c)”, substitute “paragraphs (1)(b) and (c)”.

Note: The heading to section 196B is altered by omitting “**Recklessly taking**” and substituting “**Taking**”.

**373 Paragraph 196D(1)(a)**

Omit “native”.

**374 Subsection 196D(2)**

Omit “paragraph (1)(c)”, substitute “paragraphs (1)(b) and (c)”.

**375 Paragraph 197(c)**

Omit “a subsection of section 18 or of section 18A”, substitute “subsection 18(1), (2), (3), (4), (5) or (6) or 18A(1) or (2)”.

**376 Subparagraph 197(d)(i)**

Omit “section 18 or 18A”, substitute “subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2)”.

**377 Subparagraph 197(d)(ii)**

Omit “management plan that is an accredited management plan”, substitute “management arrangement or authorisation process that is an accredited management arrangement or an accredited authorisation process”.

**378 After paragraph 197(d)**

Insert:

(da) an action that:

- (i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2); and

- (ii) is taken in accordance with the bioregional plan to which the declaration relates; or
- (db) in the case of sections 196B, 196C, 196D and 196E—an action that is trading, keeping or moving a member of a listed threatened species or a listed ecological community, if:
  - (i) when the member of the species or community was taken, the species or community was not a listed threatened species or a listed threatened ecological community, as the case requires; and
  - (ii) the trading, keeping or moving of the member of the species or community occurs during the period of 6 months that started when the species or community became a listed threatened species or a listed threatened ecological community, as the case requires; or

**379 At the end of section 197**

Add:

- ; or (l) an action, to the extent that it is covered by subsection 517A(7); or
- (m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or
- (n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or
- (o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:
  - (i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and
  - (ii) is in force; or
- (p) an action that is taken in accordance with a permit that:
  - (i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and
  - (ii) is in force; or
- (q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:

- (i) obtained from an area that is not a Commonwealth area; or
- (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p).

**380 Paragraph 199(1)(b)**

After “or 196E”, insert “, otherwise than because of paragraph 197(db)”.

**381 Subsection 199(4)**

Repeal the subsection, substitute:

- (4) Subsection (2) does not apply if:
  - (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
  - (b) the action is in a class of actions:
    - (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
    - (ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

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

**382 Subsections 200(3), (4) and (5)**

Repeal the subsections, substitute:

- (3) As soon as practicable after receiving the application, the Minister must cause to be published on the Internet:
  - (a) details of the application; and
  - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

**383 Subsection 201(1)**

Omit “subsection (3)”, substitute “subsections (3) and (3A)”.

**384 After subsection 201(3)**

Insert:

- (3A) The Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the listed threatened species or listed threatened ecological community concerned.

**385 Subsection 201(5)**

Repeal the subsection, substitute:

- (5) In making a decision on the application, the Minister must consider the comments (if any) received:
- (a) in response to the invitation under subsection 200(3) for anyone to give the Minister comments on whether the permit should be issued; and
  - (b) within the period specified in the invitation.

**386 Section 206A**

Before “An”, insert “(1)”.

**387 Section 206A**

Omit “An”, substitute “Subject to subsection (2), an”.

**388 At the end of section 206A**

Add:

- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

**389 After subsection 207A(1)**

Insert:

- (1A) In considering whether to list habitat, the Minister must take into account the potential conservation benefit of listing the habitat.
- (1B) Subsection (1) does not limit the matters:

- (a) that the Minister may take into account in considering whether to list habitat; or
- (b) that the regulations may require or permit the Minister to take into account in considering whether to list habitat.

**390 After subsection 207A(3)**

Insert:

- (3A) Particular material included in the register does not have to be made available for public inspection if the Minister considers that the interests of relevant landholders could be impeded or compromised by:
  - (a) the disclosure of the material; or
  - (b) without limiting paragraph (a)—the presence or actions of persons if the material were disclosed.

**391 Section 208A**

Repeal the section, substitute:

**208A Minister may accredit plans, regimes or policies**

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
  - (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
  - (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
  - (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
    - (i) made by a State or self-governing Territory; and
    - (ii) in force under a law of the State or self-governing Territory; or
  - (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
  - (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management

(within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

- (f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed threatened species (other than conservation dependent species) are not killed or injured as a result of the fishing; and
- (g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

### **392 Subsection 209(1)**

Omit “, by instrument published in the *Gazette*”.

### **393 Paragraphs 209(3)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) all migratory species that are:
  - (i) native species; and
  - (ii) from time to time included in the appendices to the Bonn Convention; and
- (b) all migratory species from time to time included in annexes established under JAMBA and CAMBA; and

### **394 Subsection 209(4)**

Omit “by instrument published in the *Gazette*”, substitute “by legislative instrument”.

### **395 Subsection 209(5)**

Repeal the subsection.

### **396 Subsection 209(6)**

Omit “, by instrument published in the *Gazette*,”.

**397 At the end of section 209**

Add:

(7) The list of migratory species made under subsection (1), and any amendments to the list made under paragraph (1)(b) or subsection (6), are legislative instruments, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the list or any amendments.

(8) In this Act:

*migratory species* has the meaning given by Article I of the Bonn Convention.

**398 Paragraph 211(1)(b)**

Omit “migratory”.

**399 Subsection 211(2)**

Omit “paragraph (1)(d)”, substitute “paragraphs (1)(c) and (d)”.

Note: The heading to section 211 is altered by omitting “**Recklessly killing**” and substituting “**Killing**”.

**400 Paragraph 211B(1)(a)**

Omit “migratory”.

**401 Subsection 211B(2)**

Omit “paragraph (1)(c)”, substitute “paragraphs (1)(b) and (c)”.

Note: The heading to section 211B is altered by omitting “**Recklessly taking**” and substituting “**Taking**”.

**402 Paragraph 211D(1)(a)**

Omit “migratory”.

**403 Subsection 211D(2)**

Omit “paragraph (1)(c)”, substitute “paragraphs (1)(b) and (c)”.

**404 Paragraph 212(c)**

Omit “or section 20A”, substitute “or 20A(1) or (2)”.



**405 Subparagraph 212(d)(i)**

Omit “section 20 or 20A”, substitute “subsection 20(1) or 20A(1) or (2)”.

**406 Subparagraph 212(d)(ii)**

Omit “management plan that is an accredited management plan”, substitute “management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process”.

**407 After paragraph 212(d)**

Insert:

(da) an action that:

- (i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); and
- (ii) is taken in accordance with the bioregional plan to which the declaration relates; or

(db) in the case of sections 211B, 211C, 211D and 211E—an action that is trading, keeping or moving a member of a listed migratory species, if:

- (i) when the member of the species was taken, the species was not a listed migratory species; and
- (ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed migratory species; or

**408 At the end of section 212**

Add:

- ; or (l) an action, to the extent that it is covered by subsection 517A(7); or
- (m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or
- (n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or
- (o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

- (i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and
- (ii) is in force; or
- (p) an action that is taken in accordance with a permit that:
  - (i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and
  - (ii) is in force; or
- (q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:
  - (i) obtained from an area that is not a Commonwealth area; or
  - (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p).

**409 Paragraph 214(1)(b)**

After “or 211E”, insert “, otherwise than because of paragraph 212(db)”.

**410 Subsection 214(4)**

Repeal the subsection, substitute:

- (4) Subsection (2) does not apply if:
  - (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
  - (b) the action is in a class of actions:
    - (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
    - (ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

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

**411 Subsections 215(3), (4) and (5)**

Repeal the subsections, substitute:

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- (3) As soon as practicable after receiving the application, the Minister must cause to be published on the Internet:
- (a) details of the application; and
  - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

#### **412 Subsection 216(4)**

Repeal the subsection, substitute:

- (4) In making a decision on the application, the Minister must consider the comments (if any) received:
- (a) in response to the invitation under subsection 215(3) for anyone to give the Minister comments on whether the permit should be issued; and
  - (b) within the period specified in the invitation.

#### **413 Section 221A**

Before “An”, insert “(1)”.

#### **414 Section 221A**

Omit “An”, substitute “Subject to subsection (2), an”.

#### **415 At the end of section 221A**

Add:

- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

#### **416 Section 222A**

Repeal the section, substitute:

**222A Minister may accredit plans, regimes or policies**

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
  - (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
  - (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
    - (i) made by a State or self-governing Territory; and
    - (ii) in force under a law of the State or self-governing Territory; or
  - (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
  - (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

- (f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and
- (g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

- (2) An instrument under subsection (1) is not a legislative instrument.
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**417 Subsection 224(2)**

Omit “(other than an export/import provision)”.

**418 Subsection 224(4)**

Repeal the subsection.

**419 Subdivision B of Division 3 of Part 13 (heading)**

Repeal the heading, substitute:

**Subdivision B—Australian Whale Sanctuary and important  
cetacean habitat areas**

**420 Subsection 225(2)**

Repeal the subsection, substitute:

(2) The *Australian Whale Sanctuary* comprises:

- (a) any waters of the sea inside the seaward boundary of the exclusive economic zone, except:
  - (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
  - (ii) waters within the limits of a State or the Northern Territory; and
- (b) any waters over the continental shelf, except:
  - (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
  - (ii) waters within the limits of a State or the Northern Territory; and
  - (iii) waters covered by paragraph (a); and
- (c) so much of the coastal waters of a State or the Northern Territory as are prescribed waters.

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

**421 After section 228**

Insert:

## 228A Important cetacean habitat areas

- (1) The Minister may, by legislative instrument, declare a specified area in the Australian Whale Sanctuary to be an important cetacean habitat area.
- (2) The regulations may specify criteria to be applied by the Minister in determining whether to declare an area to be an important cetacean habitat area. If regulations are made for the purposes of this section, the Minister may declare an area to be an important cetacean habitat area only if he or she is satisfied that the area meets the criteria prescribed by the regulations.

## 422 After subsection 229(1)

Insert:

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

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

Note: The heading to section 229 is altered by omitting “**Recklessly killing**” and substituting “**Killing**”.

## 423 Subsection 229B(4)

Insert:

*trade* a cetacean:

(a) includes:

- (i) buy the cetacean, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or
  - (ii) sell the cetacean, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or
  - (iii) cause or allow any of the acts referred to in subparagraph (i) or (ii) to be done; but
- (b) does not include export the cetacean from Australia or an external Territory or import it into Australia or an external Territory.

Note: For provisions relating to export or import, see Part 13A.

#### **424 Subsection 229D(2)**

Omit “The offence”, substitute “An offence against subsection (1)”.

Note 1: The heading to section 229D is replaced by the heading “**Treating cetaceans**”.

Note 2: The following heading to subsection 229D(1) is inserted “*Treating unlawfully killed or taken cetaceans*”.

#### **425 After subsection 229D(2)**

Insert:

*Treating unlawfully imported cetaceans*

(2A) A person commits an offence if:

- (a) the person treats a cetacean; and
- (b) the cetacean has been unlawfully imported.

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

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(2B) An offence against subsection (2A) is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

#### **426 Subsection 230(1)**

Omit “Subject to section 231, a person”, substitute “A person”.

Note: The following heading to subsection 230(1) is inserted “*Possession of unlawfully killed cetaceans*”.

#### **427 Subsection 230(2)**

Omit “this section”, substitute “subsection (1)”.

#### **428 At the end of section 230**

Add:

*Possession of unlawfully imported cetaceans*

(3) A person commits an offence if:

- (a) the person has in his or her possession:
  - (i) a cetacean; or

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- (ii) a part of a cetacean; or
- (iii) a product derived from a cetacean; and
- (b) the cetacean, part or product, as the case may be, has been unlawfully imported.

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

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

- (4) An offence against subsection (3) is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

**429 After paragraph 231(a)**

Insert:

- (aa) an action that is whale watching carried out in accordance with regulations referred to in paragraph 238(3)(c), but only if:
  - (i) the whale watching is not carried out for a commercial purpose; or
  - (ii) the whale watching is carried out in an area that is not an important cetacean habitat area; or

**430 After paragraph 231(b)**

Insert:

- (ba) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 23(1) or (2) or 24A(1), (2), (3) or (4); or
- (bb) an action that:
  - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 23(1) or (2) or 24A(1), (2), (3) or (4); and
  - (ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration; or
- (bc) an action that:



- (i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 23(1) or (2) or 24A(1), (2), (3) or (4); and
- (ii) is taken in accordance with the bioregional plan to which the declaration relates; or

**431 After paragraph 231(g)**

Insert:

- (ga) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

**432 At the end of section 231**

Add:

- ; or (i) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or
- (j) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or
- (k) an action that consists of the transit of a cetacean through a Commonwealth area in circumstances where the cetacean was:
  - (i) obtained from an area that is not a Commonwealth area; or
  - (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (ba), (bb), (bc), (ga), (h), (i) or (j).

**433 Subsection 232(4)**

Repeal the subsection, substitute:

- (4) Subsection (2) does not apply if:
  - (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
  - (b) the action is in a class of actions:
    - (i) that are specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and

- (ii) that the agreement or arrangement provides are to be notified to the Secretary by the agency.

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

**434 Subdivision D of Division 3 of Part 13**

Repeal the Subdivision.

**435 Subsection 236(5) (paragraphs (a) and (b) of the definition of *foreign whaling vessel*)**

Omit “whales”, substitute “cetaceans”.

**436 Subsection 237(1) (note)**

Repeal the note.

**437 Subsections 237(3), (4) and (5)**

Repeal the subsections, substitute:

- (3) As soon as practicable after receiving the application, the Minister must cause to be published on the Internet:
- (a) details of the application; and
  - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

**438 Subsection 238(1)**

Omit “subsections (3) and (4)”, substitute “subsections (3) to (4)”.

**439 Subsection 238(2)**

Omit “, 230, 232A, 232B, 233 and 234”, substitute “and 230”.

**440 Paragraph 238(3)(c)**

Repeal the paragraph, substitute:

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- (c) the specified action is whale watching (other than whale watching covered by paragraph 231(aa)) and:
  - (i) the whale watching is carried out in accordance with the regulations (if any) made for the purposes of this section; or
  - (ii) the whale watching will not adversely affect the conservation status of a species of cetacean or a population of that species, and is not inconsistent with a recovery plan or wildlife conservation plan that is in force for a species of cetacean.

**441 Paragraphs 238(3)(d) and (e)**

Repeal the paragraphs.

**442 Subsection 238(3) (note)**

Repeal the note.

**443 After subsection 238(3)**

Insert:

- (3AA) If the specified action would or could relate to a species of cetacean that is a listed threatened species, the Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the species of cetacean.

**444 Subsection 238(3A)**

Repeal the subsection, substitute:

- (3A) In making a decision on the application, the Minister must consider the comments (if any) received:
  - (a) in response to the invitation under subsection 237(3) for anyone to give the Minister comments on whether the permit should be issued; and
  - (b) within the period specified in the invitation.

**445 Subsection 238(5) (definition of *whale watching*)**

Repeal the definition, substitute:

***whale watching*** means any activity conducted for the purpose of observing a cetacean, including but not limited to being in the

water for the purposes of observing or swimming with a cetacean, or otherwise interacting with a cetacean.

**446 Section 243A**

Before “An”, insert “(1)”.

**447 Section 243A**

Omit “An”, substitute “Subject to subsection (2), an”.

**448 At the end of section 243A**

Add:

- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

**449 Section 245**

Repeal the section, substitute:

**245 Minister may accredit plans, regimes or policies**

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
  - (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
  - (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
    - (i) made by a State or self-governing Territory; and
    - (ii) in force under a law of the State or self-governing Territory; or
  - (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
  - (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management

(within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

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

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

#### **450 Paragraph 254(1)(b)**

Omit “marine”.

#### **451 Subsection 254(2)**

Omit “paragraph (1)(d)”, substitute “paragraphs (1)(c) and (d)”.

Note: The heading to section 254 is altered by omitting “**Recklessly killing**” and substituting “**Killing**”.

#### **452 Paragraph 254B(1)(a)**

Omit “marine”.

#### **453 Subsection 254B(2)**

Omit “paragraph (1)(c)”, substitute “paragraphs (1)(b) and (c)”.

Note: The heading to section 254 is altered by omitting “**Recklessly taking**” and substituting “**Taking**”.

#### **454 Paragraph 254D(1)(a)**

Omit “marine”.

#### **455 Subsection 254D(2)**

Omit “paragraph (1)(c)”, substitute “paragraphs (1)(b) and (c)”.

**456 Subparagraph 255(d)(ii)**

Omit “management plan that is an accredited management plan”, substitute “management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process”.

**457 After paragraph 255(d)**

Insert:

(da) an action that:

(i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 26(1) or (2) or 27A(1), (2), (3) or (4); and

(ii) is taken in accordance with the bioregional plan to which the declaration relates; or

(db) in the case of sections 254B, 254C, 254D and 254E—an action that is trading, keeping or moving a member of a listed marine species, if:

(i) when the member of the species was taken, the species was not a listed marine species; and

(ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed marine species; or

**458 At the end of section 255**

Add:

; or (l) an action, to the extent that it is covered by subsection 517A(7); or

(m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

- (i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and
- (ii) is in force; or
- (p) an action that is taken in accordance with a permit that:
  - (i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and
  - (ii) is in force; or
- (q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:
  - (i) obtained from an area that is not a Commonwealth area; or
  - (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (l), (m), (n), (o) or (p).

**459 Paragraph 256(1)(b)**

After “or 254E”, insert “, otherwise than because of paragraph 255(db)”.

**460 Subsection 256(4)**

Repeal the subsection, substitute:

- (4) Subsection (2) does not apply if:
  - (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
  - (b) the action is in a class of actions:
    - (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
    - (ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

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

**461 Subsections 257(3), (4) and (5)**

Repeal the subsections, substitute:

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- (3) As soon as practicable after receiving the application, the Minister must cause to be published on the Internet:
- (a) details of the application; and
  - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

**462 Subsection 258(4)**

Repeal the subsection, substitute:

- (4) In making a decision on the application, the Minister must consider the comments (if any) received:
- (a) in response to the invitation under subsection 257(3) for anyone to give the Minister comments on whether the permit should be issued; and
  - (b) within the period specified in the invitation.

**463 Section 263A**

Before “An”, insert “(1)”.

**464 Section 263A**

Omit “An”, substitute “Subject to subsection (2), an”.

**465 At the end of section 263A**

Add:

- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

**466 Section 265**

Repeal the section, substitute:



## **265 Minister may accredit plans, regimes or policies**

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
  - (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
  - (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
    - (i) made by a State or self-governing Territory; and
    - (ii) in force under a law of the State or self-governing Territory; or
  - (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
  - (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

- (f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of the fishing; and
- (g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

- (2) An instrument under subsection (1) is not a legislative instrument.

**467 Division 4A of Part 13**

Repeal the Division.

**468 Division 5 of Part 13 (heading)**

Repeal the heading, substitute:

**Division 5—Conservation advice, recovery plans, threat abatement plans and wildlife conservation plans**

**469 Before Subdivision A of Division 5 of Part 13**

Insert:

**Subdivision AA—Approved conservation advice**

**266B Approved conservation advice for listed threatened species and listed threatened ecological communities**

*Minister to ensure there is approved conservation advice*

- (1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extinct or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species or community continues to be listed.
- (2) For this purpose, *approved conservation advice* is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains:
  - (a) a statement that sets out:
    - (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and
    - (ii) the main factors that are the cause of it being so eligible; and
  - (b) either:
    - (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or

- (ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community.

*Changing approved conservation advice*

- (3) The Minister may, in writing, approve changes to approved conservation advice.

*Consultation with Scientific Committee*

- (4) If the Minister proposes to approve a document as approved conservation advice, the Minister must consult the Scientific Committee about the document, unless its content is substantially the same as material that the Committee has previously provided to the Minister.
- (5) If the Minister proposes to approve a change to approved conservation advice, the Minister must consult the Scientific Committee about the change, unless the change is substantially the same as a change that the Scientific Committee has previously advised the Minister should be made.

*Publication requirements*

- (6) If the Minister approves a document as approved conservation advice, the Minister must:
  - (a) within 10 days of the approval of the document, publish the approved conservation advice on the Internet; and
  - (b) comply with any other publication requirements of the regulations.
- (7) If the Minister approves a change to approved conservation advice, the Minister must:
  - (a) within 10 days of the approval of the change, publish the advice, as changed, on the Internet; and
  - (b) comply with any other publication requirements of the regulations.

*Instruments of approval are not legislative instruments*

- (8) An instrument of approval under subsection (2) or (3) is not a legislative instrument.

**470 Section 267**

Omit:

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

substitute:

The Minister need ensure that a recovery plan is in force for a listed threatened species or ecological community only if the Minister decides to have a recovery plan. The Minister must decide whether to have a recovery plan for the species or community within 90 days after it becomes listed. The Minister may, at any other time, decide whether to have such a plan.

**471 After section 269**

Insert:

**269AA Decision whether to have a recovery plan**

*Minister has an initial obligation and then a discretion*

- (1) The Minister must decide whether to have a recovery plan for a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community within 90 days after the species or community becomes listed. The Minister may, at any other time, decide whether to have a recovery plan for the species or community.
- (2) In this section:
  - (a) the decision that the Minister is required by subsection (1) to make in relation to the species or community within the 90 day period referred to in that subsection is the ***initial recovery plan decision***; and
  - (b) any subsequent decision that the Minister makes under subsection (1) in relation to the species or community is a ***subsequent recovery plan decision***.

*Making the initial recovery plan decision*

- (3) In making the initial recovery plan decision, the Minister must have regard to the recommendation (the **initial recommendation**) made by the Scientific Committee as mentioned in paragraph 189(1A)(c) in relation to the species or community.

*Making a subsequent recovery plan decision (unless subsection (5) applies)*

- (4) In making a subsequent recovery plan decision in relation to the species or community, other than a decision to which subsection (5) applies:
- (a) the Minister must have regard to the initial recommendation in relation to the species or community; and
  - (b) the Minister must have regard to any advice subsequently provided to the Minister by the Scientific Committee about whether there should be a recovery plan for the species or community.

*Changing from a decision to have a recovery plan to a decision not to have a recovery plan—additional requirements*

- (5) If, at a time when a decision to have a recovery plan for the species or community is in force (whether or not the plan has yet been made), the Minister is proposing to make a subsequent recovery plan decision that there should not be a recovery plan for the species or community:
- (a) the Minister must ask the Scientific Committee for advice relating to the proposed decision; and
  - (b) the Minister must publish a notice inviting comments on the proposed decision in accordance with subsection (7); and
  - (c) the Minister must, in deciding whether to make the proposed decision, take account of:
    - (i) any advice provided by the Scientific Committee in relation to the proposed decision; and
    - (ii) subject to subsection (6), the comments the Minister receives in response to the notice referred to in paragraph (b).
- (6) The Minister is not required to take a comment referred to in subparagraph (5)(c)(ii) into account if:

- (a) the Minister does not receive the comment until after the cut-off date specified in the notice under paragraph (5)(b); or
  - (b) the Minister considers that regulations referred to in paragraph (8)(b) have not been complied with in relation to the comment.
- (7) The notice referred to in paragraph (5)(b):
- (a) must be published in accordance with the regulations referred to in paragraph (8)(a); and
  - (b) must set out the decision the Minister proposed to make; and
  - (c) must invite people to make comments, to the Minister, about the proposed decision; and
  - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
  - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (8)(b), apply to making comments; and
  - (f) may also include any other information that the Minister considers appropriate.
- (8) The regulations must provide for the following:
- (a) how a notice referred to in paragraph (5)(b) is to be published;
  - (b) the manner and form for making comments.

*General publication requirements*

- (9) The Minister must publish the following:
- (a) the Minister's initial recovery plan decision, and the reasons for it;
  - (b) each subsequent recovery plan decision (if any), and the reasons for it.

The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way that the Minister considers appropriate.

Note: This subsection must be complied with, even if the Minister has already published notice of the proposed decision in accordance with subsections (5) and (7).

*Decisions not legislative instruments*

- (10) An instrument making a decision under subsection (1) is not a legislative instrument.

**472 Subsection 269A(1)**

Repeal the subsection, substitute:

*Application*

- (1) This section applies only if the Minister's most recent decision under section 269AA in relation to a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community is to have a recovery plan for the species or community.

Note: Subsection 273(1) sets a deadline of 3 years from the decision for ensuring that a recovery plan is in force for the species or community. Subsection 273(2) allows that period to be extended.

**473 Subsection 269A(2) (note)**

Repeal the note.

**474 Subsection 269A(3)**

After "community jointly with", insert "one or more of".

**475 Subsection 269A(3)**

After "agencies of", insert "one or more of".

**476 Paragraph 269A(5)(a)**

After "occurs,", insert "and in which actions that the plan would provide for would occur,".

**477 Subsection 269A(6)**

Repeal the subsection, substitute:

*Limits on making a plan*

- (6) The Minister must not make a recovery plan under subsection (2) for a species or ecological community that occurs wholly or partly outside a Commonwealth area unless the Minister is satisfied that it is not reasonably practicable, within the period of 3 years referred

to in subsection 273(1), to make the plan under subsection (3) of this section with each State or Territory:

- (a) in which the species or community occurs; and
- (b) in which actions that the plan would provide for would occur, if the plan were made under subsection (2) of this section.

**478 Subsection 270(2)**

After “a recovery plan must”, insert “(subject to subsection (2A))”.

**479 After subsection 270(2)**

Insert:

- (2A) A recovery plan need only address the matters mentioned in paragraphs (2)(d), (e), (f), (g) and (h) to the extent to which it is practicable to do so.

**480 Paragraphs 271(2)(d) to (f)**

Repeal the paragraphs.

**481 At the end of section 271**

Add:

- (4) A threat abatement plan may:
  - (a) state the estimated duration and cost of the threat abatement process; and
  - (b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and
  - (c) specify any major ecological matters (other than the species or communities threatened by the key threatening process that is the subject of the plan) that will be affected by the plan’s implementation.
- (5) Subsection (4) does not limit the matters that a threat abatement plan may include.

**482 Subsections 273(1), (2) and (3)**

Repeal the subsections, substitute:



*Deadline for recovery plan*

- (1) Subject to subsection (2), a recovery plan for a listed threatened species or a listed threatened ecological community must be made and in force within 3 years of the decision under section 269AA to have the plan.
- (2) The Minister may, in writing, extend the period within which a recovery plan must be made. Only one extension can be granted for the making of the plan, and the period of the extension must not be more than 3 years.

*Ensuring recovery plan is in force*

- (3) Once the first recovery plan for a listed threatened species or a listed threatened ecological community is in force, the Minister must exercise his or her powers under this Subdivision to ensure that a recovery plan is in force for the species or community until the Minister decides under section 269AA not to have a recovery plan for the species or community.

Note: The Minister may revoke a recovery plan for a listed threatened species or a listed threatened ecological community if the Minister decides under section 269AA not to have a recovery plan for the species or community. See section 283A.

Note: The heading to section 278 is altered by omitting “, **review and variation**”.

#### **483 Subsection 283A(1)**

Repeal the subsection, substitute:

- (1) The Minister may, by legislative instrument:
  - (a) revoke a recovery plan for a listed threatened species or a listed threatened ecological community if the Minister decides under section 269AA not to have a recovery plan for the species or community; or
  - (b) revoke a threat abatement plan for a key threatening process if the Minister decides under section 270A not to have a threat abatement plan for the process.

Note: The heading to section 283A is altered by omitting “**threat abatement**”.

#### **484 Paragraph 283A(2)(a)**

Omit “threat abatement”.

**485 Section 299**

Omit “a recovery plan takes effect for the species”, substitute “the species becomes a listed threatened species as mentioned in paragraph (b)”.

**486 At the end of Subdivision C of Division 5 of Part 13**

Add:

**300B Assistance from the Scientific Committee**

- (1) The Minister may, at any time, ask the Scientific Committee to provide the Minister with a statement, information or advice for the purpose of assisting the Minister in the performance or exercise of the Minister’s functions or powers under section 266B, 269AA or 270A.
- (2) The Scientific Committee may, at any time, provide the Minister with a statement, information or advice for the purpose of assisting the Minister in the performance or exercise of the Minister’s functions or powers under section 266B, 269AA or 270A (whether or not the Committee is acting in response to a request under subsection (1) of this section).

**487 At the end of Division 8 of Part 13**

Add:

**303AA Conditions relating to accreditation of plans, regimes and policies**

- (1) This section applies to an accreditation of a plan, regime or policy under section 208A, 222A, 245 or 265.
- (2) The Minister may accredit a plan, regime or policy under that section even though he or she considers that the plan, regime or policy should be accredited only:
  - (a) during a particular period; or
  - (b) while certain circumstances exist; or
  - (c) while a certain condition is complied with.

In such a case, the instrument of accreditation is to specify the period, circumstances or condition.

- (3) If an accreditation specifies a particular period as mentioned in subsection (2), the accreditation ceases to be in force at the end of that period.
- (4) If an accreditation specifies circumstances as mentioned in subsection (2), the Minister must, in writing, revoke the accreditation if he or she is satisfied that those circumstances have ceased to exist.
- (5) The Minister may, in writing, vary an accreditation by:
  - (a) specifying one or more conditions (or further conditions) to which the accreditation is subject; or
  - (b) revoking or varying a condition:
    - (i) specified in the instrument of accreditation; or
    - (ii) specified under paragraph (a).
- (6) A condition may relate to reporting or monitoring.
- (7) The Minister must, in writing, revoke an accreditation if he or she is satisfied that a condition of the accreditation has been contravened.

### **303AB Amended policies, regimes or plans taken to be accredited**

- (1) If:
  - (a) a plan, regime or policy is accredited under section 208A, 222A, 245 or 265; and
  - (b) the plan, regime or policy is amended, or is proposed to be amended; and
  - (c) the Minister is satisfied that the amendments are, or will be, minor; and
  - (d) the Minister is satisfied that the plan, regime or policy as amended meets, or will meet, the requirements of subsection 208A(1), 222A(1), 245(1) or 265(1) (as the case may be);the Minister may, by instrument in writing, determine that this subsection applies to the amendments.
- (2) If the Minister makes a determination under subsection (1), the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection 208A(1), 222A(2), 245(1) or 265(1) (as the case may be).

- (3) A determination under subsection (1) of this section is not a legislative instrument.

**488 Subsection 303CG(2)**

After “specified in the permit”, insert “, in the permitted period,”.

**489 After subsection 303CG(2)**

Insert:

- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 6 months after that date.

**490 Section 303CH**

Before “The following”, insert “(1)”.

**491 Section 303CH (paragraph (a) in the cell at table item 3, column headed “Specific conditions”)**

Before “the country”, insert “for any specimen—”.

**492 Section 303CH (paragraph (b) in the cell at table item 3, column headed “Specific conditions”)**

Repeal the paragraph, substitute:

(b) for a specimen that:

- (i) is specified by the Minister in a notice published in the *Gazette* to be a declared specimen; and
- (ii) is not, or is not derived from, an animal that was bred in captivity (section 527B); and
- (iii) is not, or is not derived from, a plant that was artificially propagated (section 527C);

the proposed import of the specimen would be an import from an approved commercial import program in accordance with section 303FU.

**493 Section 303CH (after subparagraph (b)(ii) in the cell at table item 4, column headed “Specific conditions”)**

Insert:

- (iia) an export from an approved cultivation program in accordance with section 303FLA; or

**494 Section 303CH (after subparagraph (b)(ii) in the cell at table item 6, column headed “Specific conditions”)**

Insert:

- (iia) an export from an approved cultivation program in accordance with section 303FLA; or

**495 At the end of section 303CH**

Add:

- (2) A notice made under subparagraph (b)(i) of item 3 in the table in subsection (1) is not a legislative instrument.

**496 Paragraph 303CJ(b)**

Repeal the paragraph, substitute:

- (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
  - (i) the permitted period (within the meaning of subsection 303CG(2A));
  - (ii) each period for which one or more conditions of the permit are expressed to apply.

**497 After paragraph 303DB(6)(a)**

Insert:

- (aa) the Minister has had regard to any approved conservation advice for that species; and

**498 Subsection 303DG(1)**

Omit “subsections (3), (3A) and (4)”, substitute “subsections (3) to (4A)”.

**499 Subsection 303DG(2)**

After “specified in the permit”, insert “, in the permitted period.”.

**500 After subsection 303DG(2)**

Insert:

- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 3 years after that date.

**501 After subsection 303DG(4)**

Insert:

- (4A) If the Minister is considering whether to issue a permit relating to a specimen that belongs to a particular eligible listed threatened species, the Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the species.

**502 After paragraph 303DG(7)(b)**

Insert:

- (ba) the export of the specimen would be an export from an approved cultivation program in accordance with section 303FLA; or

**503 Paragraph 303DI(b)**

Repeal the paragraph, substitute:

- (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
- (i) the permitted period (within the meaning of subsection 303DG(2A));
  - (ii) each period for which one or more conditions of the permit are expressed to apply.

**504 Subsection 303EB(7)**

After “Part 2 of the list”, insert “(except a specimen referred to in subsection (11A))”.

**505 After subsection 303EB(11)**

Insert:

- (11A) Part 2 of the list is taken to include a live plant that:
-

- (a) is a CITES specimen; and
- (b) is introduced into Australia in accordance with the *Quarantine Act 1908*.

**506 Subsections 303ED(2), (3) and (4)**

Repeal the subsections, substitute:

- (2) Unless subsection (3) applies, the Minister must:
  - (a) cause to be conducted an assessment of the potential impacts on the environment of the proposed amendment; and
  - (b) cause to be prepared a report on those impacts.The report must be prepared in accordance with section 303EF and be given to the Minister.
- (3) This subsection applies if:
  - (a) Biosecurity Australia has prepared a report (whether before or after the amendment was proposed) on the potential impacts on the environment if the specimen were to be imported; and
  - (b) the report is of a type specified in regulations made for the purposes of this paragraph; and
  - (c) the report is given to the Minister; and
  - (d) the Minister determines that subsection (2) does not apply to the proposed amendment.
- (4) A determination made under paragraph (3)(d) is not a legislative instrument.

**507 Subsection 303EE(2)**

Repeal the subsection, substitute:

- (2) The Minister must not consider the application unless either subsection (3) or (4) applies to the proposed amendment.
- (3) This subsection applies to the proposed amendment if:
  - (a) subsection (4) does not apply to the proposed amendment; and
  - (b) an assessment is made of the potential impacts on the environment of the proposed amendment; and
  - (c) a report on those impacts is given to the Minister.The report must be prepared in accordance with section 303EF.

- (4) This subsection applies to the proposed amendment if:
  - (a) Biosecurity Australia has prepared a report (whether before or after the amendment was proposed) on the potential impacts on the environment if the specimen were to be imported; and
  - (b) the report is of a type specified in regulations made for the purposes of this paragraph; and
  - (c) the report has been given to the Minister; and
  - (d) the Minister determines that subsection (3) does not apply to the proposed amendment.
- (5) A determination made under paragraph (4)(d) is not a legislative instrument.

### **508 Section 303EF**

Repeal the section, substitute:

#### **303EF Requirement for assessments**

- (1) The assessment under subsection 303ED(2) or 303EE(3) must provide for:
  - (a) if the Minister determines that this paragraph applies—the preparation of terms of reference for a report on the relevant impacts; or
  - (b) if the Minister determines that this paragraph applies—all of the following:
    - (i) the preparation of draft terms of reference for a report on the relevant impacts;
    - (ii) the publication of the draft terms of reference for public comment for a period of at least 10 business days that is specified by the Minister;
    - (iii) the finalisation of the terms of reference, to the Minister's satisfaction, taking into account the comments (if any) received on the draft terms of reference.
- (2) The assessment must also provide for:
  - (a) the preparation of a draft of a report on the relevant impacts; and



- (b) the publication of the draft report for public comment for a period of at least 20 business days that is specified by the Minister; and
  - (c) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and
  - (d) any other matter prescribed by the regulations.
- (3) A determination made under paragraph (1)(a) or (b) is not a legislative instrument.

**509 Subsection 303EN(2)**

After “specified in the permit”, insert “, in the permitted period.”.

**510 After subsection 303EN(2)**

Insert:

- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 3 years after that date.

**511 Paragraph 303EP(b)**

Repeal the paragraph, substitute:

- (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
  - (i) the permitted period (within the meaning of subsection 303EN(2A));
  - (ii) each period for which one or more conditions of the permit are expressed to apply.

**512 After paragraph 303FJ(b)**

Insert:

- (ba) the export of the specimen would be an export from an approved cultivation program in accordance with section 303FLA; or

**513 After section 303FL**

Insert:

**303FLA Export from an approved cultivation program**

The export of a specimen is an export from an approved cultivation program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved cultivation program.

**514 Subsection 303GB(2)**

After “specified in the permit”, insert “, in the permitted period,”.

**515 After subsection 303GB(2)**

Insert:

- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than:
- (a) if the permit relates to a CITES specimen—6 months after that date; or
  - (b) if the permit relates to a specimen other than a CITES specimen—12 months after that date.

**516 Subsections 303GB(3) and (4)**

Repeal the subsections, substitute:

*Duration of permit*

- (3) A permit under this section:
- (a) comes into force on the date on which it is issued; and
  - (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
    - (i) the permitted period (within the meaning of subsection (2A));
    - (ii) each period for which one or more conditions of the permit are expressed to apply.

**517 Subsection 303GC(3)**

After “specified in the permit”, insert “, in the permitted period,”.

**518 After subsection 303GC(3)**

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Insert:

- (3A) For the purpose of subsection (3), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 12 months after that date.

**519 Paragraph 303GC(6)(b)**

Repeal the paragraph, substitute:

- (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
- (i) the permitted period (within the meaning of subsection (3A));
  - (ii) each period for which one or more conditions of the permit are expressed to apply.

**520 Subsection 303GD(6)**

After “specified in the permit”, insert “, in the permitted period,”.

**521 After subsection 303GD(6)**

Insert:

- (6A) For the purpose of subsection (6), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 6 months after that date.

**522 Paragraph 303GD(7)(d)**

Repeal the paragraph, substitute:

- (d) if an assessment is to be made under subsection 303EE(3) of the potential impacts on the environment of the proposed amendment—the terms of reference for a report on the assessment have been:
- (i) prepared as mentioned in paragraph 303EF(1)(a); or
  - (ii) finalised as mentioned in subparagraph 303EF(1)(b)(iii); and

**523 Paragraph 303GD(9)(b)**

Repeal the paragraph, substitute:

- (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
  - (i) the permitted period (within the meaning of subsection (6A));
  - (ii) each period for which one or more conditions of the permit are expressed to apply.

**524 After subsection 303GE(5)**

Insert:

- (5A) Without limiting subsection (5), a condition of a permit may be expressed to apply for a period that will not end until after the export or import of a specimen under the permit has occurred, including for example:
  - (a) a period the length of which is known when the condition is imposed (such as a period that is expressed as a specified number of years); or
  - (b) a period the length of which is unknown when the condition is imposed (such as a period that is expressed as the life of the specimen, or the life of progeny of the specimen).

Note: Conditions may, for example, relate to how a specimen, and its progeny, are kept or dealt with during their lifetimes.

**525 Subsection 303GE(6)**

Omit “subsection (5) applies”, substitute “subsections (5) and (5A) apply”.

**526 Subsection 303GE(6)**

Omit “it applies”, substitute “they apply”.

**527 Subsection 303GE(7)**

After “(5)”, insert “, (5A)”.

**528 Subsection 303GJ(1)**

Omit “An”, substitute “Subject to subsection (2), an”.

**529 Subsection 303GJ(1)**

Omit “Tribunal”, substitute “Administrative Appeals Tribunal”.

**530 After subsection 303GJ(1)**

Insert:

- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

**531 Subsection 303GJ(3) (definition of *Tribunal*)**

Repeal the definition.

**532 Section 304**

Repeal the section, substitute:

**304 Object of this Part**

- (1) The object of this Part is to provide for:
- (a) conservation agreements between the Commonwealth and persons related to the protection and conservation of the following:
    - (i) biodiversity;
    - (ii) the world heritage values of declared World Heritage properties;
    - (iii) the National Heritage values of National Heritage places;
    - (iv) the Commonwealth Heritage values of Commonwealth Heritage places;
    - (v) the ecological character of a declared Ramsar wetland;
    - (vi) the environment, in respect of the impact of a nuclear action;
    - (vii) the environment in a Commonwealth marine area;
    - (viii) the environment on Commonwealth land; and
  - (b) the effect of conservation agreements; and
  - (c) the publication of conservation agreements.
- (2) Conservation agreements are agreements whose primary object is to enhance the conservation of matters referred to in paragraph (1)(a). They may relate to private or public land, or to marine areas.

Note: Conservation agreements cannot cover all or part of a Commonwealth reserve (see subsection 305(4)).

**533 Paragraph 305(1)(c)**

Omit “(whether inside or outside the Australian jurisdiction)”.

**534 At the end of subsection 305(1)**

Add:

- ; (e) the ecological character of a declared Ramsar wetland in the Australian jurisdiction;
- (f) the environment, in respect of the impact of a nuclear action in the Australian jurisdiction;
- (g) the environment in a Commonwealth marine area in the Australian jurisdiction;
- (h) the environment on Commonwealth land in the Australian jurisdiction.

Note: Conservation agreements cannot cover all or part of a Commonwealth reserve (see subsection 305(4)).

**535 At the end of paragraph 305(1A)(b)**

Add:

- or (iv) the ecological character of a declared Ramsar wetland;  
or
- (v) the environment, in respect of the impact of a nuclear action; or
- (vi) the environment in a Commonwealth marine area; or
- (vii) the environment on Commonwealth land;

**536 At the end of paragraph 305(1A)(c)**

Add:

- ; or (v) the ecological character of a declared Ramsar wetland;  
or
- (vi) the environment, in respect of the impact of a nuclear action; or
- (vii) the environment in a Commonwealth marine area; or
- (viii) the environment on Commonwealth land.

**537 At the end of subsection 305(2)**

Add:

- ; and (c) in the case of a proposed agreement wholly or partly for the protection and conservation of the ecological character of a declared Ramsar wetland—the agreement:
  - (i) will result in a net benefit to the conservation of that ecological character; and
  - (ii) is not inconsistent with the Australian Ramsar management principles; and
- (d) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment, in respect of the impact nuclear actions—the agreement does not relate to the construction or operation of any of the following nuclear installations:
  - (i) a nuclear fuel fabrication plant;
  - (ii) a nuclear power plant;
  - (iii) an enrichment plant;
  - (iv) a reprocessing facility; and
- (e) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment in a Commonwealth marine area—the agreement will result in a net benefit to the conservation of the environment in that area; and
- (f) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment on Commonwealth land—the agreement will result in a net benefit to the conservation of the environment on that land.

**538 Subsection 305(3)**

Omit “of biodiversity or heritage values”, substitute “as mentioned in paragraph (2)(a), (b), (c), (e) or (f)”.

**539 After subsection 305(3)**

Insert:

(3A) If:

- (a) the Minister is considering whether to enter into a proposed conservation agreement that is wholly or partly for the protection and conservation of biodiversity; and
- (b) the agreement would or could affect a particular listed threatened species or listed threatened ecological community;

the Minister must, in deciding whether to enter into the agreement, have regard to any approved conservation advice for the species or community.

**540 At the end of paragraph 306(1)(a)**

Add:

- (v) the ecological character of a declared Ramsar wetland;
- (vi) the environment, in respect of the impact of a nuclear action;
- (vii) the environment in a Commonwealth marine area;
- (viii) the environment on Commonwealth land;

**541 At the end of paragraph 306(1)(b)**

Add:

- or (v) the ecological character of a declared Ramsar wetland;  
or
- (vi) the environment, in respect of the impact of a nuclear action; or
- (vii) the environment in a Commonwealth marine area; or
- (viii) the environment on Commonwealth land;

**542 At the end of paragraph 306(2)(a)**

Add:

- (v) the ecological character of a declared Ramsar wetland;
- (vi) the environment, in respect of the impact of a nuclear action;
- (vii) the environment in a Commonwealth marine area;
- (viii) the environment on Commonwealth land;

**543 At the end of paragraph 306(2)(b)**

Add:

- or (v) the ecological character of a declared Ramsar wetland;  
or
- (vi) the environment, in respect of the impact of a nuclear action; or
- (vii) the environment in a Commonwealth marine area; or
- (viii) the environment on Commonwealth land;



**544 After section 306**

Insert:

**306A Conservation agreement may include declaration that actions do not need approval under Part 9**

- (1) A conservation agreement may include a declaration to the effect that actions in a specified class do not need approval under Part 9 for the purposes of a specified provision of Part 3. The declaration may specify conditions relating to the taking of actions in the class.
- (2) The Minister must not enter into a conservation agreement that contains a declaration under subsection (1) unless the Minister is satisfied that the actions to which the declaration relates are not likely to have a significant impact on the matter protected by the provision of Part 3 proposed to be specified in the declaration.

**545 After section 307**

Insert:

**307A Conservation agreements may deal with remediation or mitigation measures**

*When this section applies*

- (1) This section applies if the Minister considers that an action taken by a person after the commencement of this section contravened, or may have contravened, a provision of Part 3.

*Conservation agreements may provide for measures to repair or mitigate damage*

- (2) The Minister may enter into a conservation agreement with the person that provides for the protection and conservation of a matter referred to in section 305 by providing for the taking of measures to repair or mitigate damage to the matter protected by the provision of Part 3 (whether or not the damage may or will be, or has been, caused by the action).
- (3) The conservation agreement may state that specified provisions of the agreement, being provisions for the taking of measures as mentioned in subsection (2), are provisions that may be enforced in

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the Federal Court under this section. A provision of the agreement to which such a statement applies is a *remediation provision*.

- (4) If the conservation agreement contains a statement as mentioned in subsection (3), that statement must specify the provision of Part 3 referred to in subsection (1).

*Federal Court may order compliance with remediation provision*

- (5) If the Minister considers that the person has contravened a remediation provision, the Minister may apply to the Federal Court for an order under subsection (6).
- (6) If the Federal Court is satisfied that the person has contravened a remediation provision, the Court may make one or more of the following orders:
- (a) an order directing the person to comply with the remediation provision;
  - (b) any other order that the Court considers appropriate.

*Civil penalty for contravention of remediation provision*

- (7) The person must not contravene a remediation provision.
- (8) Subsection (7) is a civil penalty provision. Under section 481, the Federal Court may order the person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person to pay under that section for a contravention of the provision of Part 3 referred to in subsection (1).

*This section does not limit sections 305, 306 and 307*

- (9) This section does not limit anything in sections 305, 306 and 307.

**546 Section 324B**

Repeal the section.

**547 Subsection 324C(1)**

After “this Subdivision”, insert “and Subdivisions BA, BB and BC”.

**548 Subsection 324C(1) (note)**

Repeal the note.

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**549 Subsection 324C(2)**

Repeal the subsection, substitute:

- (2) A place may be included in the National Heritage List only if:
  - (a) the place is within the Australian jurisdiction; and
  - (b) the Minister is satisfied that the place has one or more National Heritage values (subject to the provisions in Subdivision BB about the emergency process).
- (3) A place that is included in the National Heritage List is called a *National Heritage place*.
- (4) The National Heritage List is not a legislative instrument.

**550 Sections 324E to 324J**

Repeal the sections, substitute:

**Subdivision BA—Inclusion of places in the National Heritage List: usual process**

**324E Simplified outline**

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for the inclusion of places in the National Heritage List.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 324G).

The usual process involves the following steps for each assessment period:

- (a) the Minister may determine heritage themes (this step is optional) (see section 324H);
- (b) the Minister invites people to nominate places for inclusion in the National Heritage List, and gives

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the nominations to the Australian Heritage Council (see sections 324J and 324JA);

- (c) the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will mostly be places that have been nominated) that it thinks should be assessed (see sections 324JB, 324JC and 324JD);
- (d) the Minister finalises the list of places that are to be assessed (see sections 324JE and 324JF);
- (e) the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 324JG);
- (f) the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 324JH and 324JI);
- (g) the Minister decides whether a place that has been assessed should be included in the National Heritage List (see section 324JJ).

The steps mentioned in paragraphs (a) to (d) will generally be completed before the start of the assessment period.

**324F Definitions**

In this Subdivision:

*assessment period* has the meaning given by subsection 324G(1).

*eligible for assessment consideration*, in relation to an assessment period, has the meaning given by subsection 324JB(3).

*finalised priority assessment list* for an assessment period has the meaning given by subsection 324JE(4).

*proposed priority assessment list* for an assessment period has the meaning given by subsection 324JB(1).

### **324G Meaning of *assessment period***

- (1) For the purposes of this Subdivision, each of the following is an *assessment period*:
  - (a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph;
  - (b) each period of 12 months starting on an anniversary of the day so determined.
- (2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.
- (3) A determination under paragraph (1)(a) is a legislative instrument, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the determination.

### **324H Minister may determine heritage themes for an assessment period**

- (1) Before the Minister invites nominations for an assessment period under section 324J, the Minister may determine one or more heritage themes that the Minister considers should be given priority in relation to the assessment period.
- (2) The Minister may request advice from the Australian Heritage Council for the purpose of making a determination under subsection (1), and may have regard to any advice the Council provides in response to the request.
- (3) A determination under subsection (1) is a legislative instrument, but section 42 of the *Legislative Instruments Act 2003* does not apply to the determination.

### **324J Minister to invite nominations for each assessment period**

- (1) Before the start of each assessment period, the Minister must publish a notice inviting people to nominate places for inclusion in the National Heritage List.
- (2) A notice under subsection (1):

- (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
  - (b) must invite people to nominate, to the Minister, places for inclusion in the National Heritage List; and
  - (c) must identify the assessment period to which the notice relates; and
  - (d) must specify a date (the *cut-off date*) by which nominations must be received, which must be at least 40 business days after the notice has been published as required by paragraph (a); and
  - (e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and
  - (f) may also include:
    - (i) information related to any heritage themes that the Minister has determined under section 324H should be given priority in relation to the assessment period; and
    - (ii) any other information that the Minister considers appropriate.
- (3) The regulations must provide for the following:
- (a) how a notice under subsection (1) is to be published;
  - (b) the manner and form for making nominations;
  - (c) what information is to be included in a nomination.

### **324JA Minister to give nominations to Australian Heritage Council**

#### *Nominations in relation to first assessment period*

- (1) Within 30 business days after the cut-off date specified in the notice under subsection 324J(1) for the first assessment period, the Minister must give the Australian Heritage Council the nominations that the Minister:
- (a) had received before the end of that cut-off date; and
  - (b) had not already requested the Australian Heritage Council, under section 324E (as in force before the commencement of this section), to assess; and
  - (c) had not already rejected under section 324E (as in force before the commencement of this section); and

- (d) does not reject under subsection (4).
- (2) Subsection (1) does not apply to a nomination of a place if:
- (a) the place is outside the Australian jurisdiction; or
  - (b) the Minister had, before the commencement of this section, included the place in the National Heritage List under section 324F (as in force before the commencement of this section).

*Nominations in relation to later assessment periods*

- (3) Within 30 business days after the cut-off date (the **current cut-off date**) specified in the notice under subsection 324J(1) for an assessment period (other than the first), the Minister must give the Australian Heritage Council the nominations that were received by the Minister in the period:
- (a) starting immediately after the end of the cut-off date specified in the notice under subsection 324J(1) for the immediately preceding assessment period; and
  - (b) ending at the end of the current cut-off date;
- other than any such nominations that the Minister rejects under subsection (4).

*Minister may reject nominations*

- (4) The Minister may, in writing, reject a nomination if the Minister considers that:
- (a) the nomination is vexatious, frivolous or not made in good faith; or
  - (b) the Minister considers that regulations referred to in paragraph 324J(3)(b) or (c) have not been complied with in relation to the nomination.
- (5) If a nomination is rejected under paragraph (4)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

*Definition*

- (6) In this section:
- nomination** means a nomination of a place for inclusion in the National Heritage List.

**324JB Australian Heritage Council to prepare proposed priority assessment list**

- (1) Within 40 business days after the Australian Heritage Council receives the nominations as required by subsection 324JA(1) in relation to an assessment period, the Council must prepare and give to the Minister a list (the *proposed priority assessment list*) for the assessment period.
- (2) The proposed priority assessment list is to consist of such of the places that are eligible for assessment consideration in relation to the assessment period as the Australian Heritage Council considers it appropriate to include in the list, having regard to:
  - (a) any heritage themes determined by the Minister under section 324H in relation to the assessment period; and
  - (b) the Council's own views about what should be given priority in relation to the assessment period; and
  - (c) the Council's capacity to make assessments under this Division while still performing its other functions; and
  - (d) any other matters that the Council considers appropriate.
- (3) A place is *eligible for assessment consideration* in relation to the assessment period if:
  - (a) the place has been nominated by a nomination referred to in subsection (1); or
  - (b) the Council itself wishes to nominate the place for inclusion in the National Heritage List; or
  - (c) the place was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) but was not included in the finalised priority assessment list for that assessment period; or
  - (d) each part of the place is either a place to which paragraph (a) applies, a place to which paragraph (b) applies or a place to which paragraph (c) applies.
- (4) Without limiting the generality of the Australian Heritage Council's discretion under subsection (2), the Council does not have to include in the proposed priority assessment list a place that has been nominated if the Council considers that it is unlikely that the place has any National Heritage values. For this purpose, the



Council is not required to have regard to any information beyond the information that was included in the nomination.

- (5) The proposed priority assessment list is not a legislative instrument.

**324JC Matters to be included in proposed priority assessment list**

- (1) The proposed priority assessment list for an assessment period is to include, for each place in the list:
- (a) a description of the place; and
  - (b) an assessment completion time; and
  - (c) any other information required by the regulations.
- (2) The assessment completion time for a place must be either:
- (a) a time that is at or before the end of the assessment period to which the list relates; or
  - (b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period).

**324JD Statement to be given to Minister with proposed priority assessment list**

- (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to:
- (a) for each place that is included in the list—why the Council included the place in the list; and
  - (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 324JB(3)(a) or (c)—why the Council did not include the place in the list.
- (2) The statement must also identify, as places nominated by the Australian Heritage Council:
- (a) any places that are included in the list because the Council itself wishes to nominate them (see paragraph 324JB(3)(b)); and

- (b) any places that are included in the list because of paragraph 324JB(3)(d) that consist of one or more places to which paragraph 324JB(3)(b) applies.

### **324JE The finalised priority assessment list**

- (1) Within 20 business days after the Minister, under section 324JB, receives the proposed priority assessment list for an assessment period, the Minister may, in writing, make changes to the list as mentioned in subsection (2).
- (2) The changes the Minister may make are as follows:
  - (a) including a place in the list (and also including the matters referred to in subsection 324JC(1));
  - (b) omitting a place from the list (and also omitting the matters referred to in subsection 324JC(1));
  - (c) changing the assessment completion time for a place in the list;
  - (d) any other changes of a kind permitted by the regulations.
- (3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.
- (4) At the end of the period of 20 business days referred to in subsection (1), the list, as changed (if at all) by the Minister, becomes the *finalised priority assessment list* for the assessment period.
- (5) The Minister must notify the Australian Heritage Council of all changes that the Minister makes to the list.
- (6) The finalised priority assessment list is not a legislative instrument.

### **324JF Publication of finalised priority assessment list**

- (1) The Australian Heritage Council must publish the finalised priority assessment list for an assessment period on the Internet.
- (2) The Australian Heritage Council must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

**324JG Australian Heritage Council to invite comments on places in finalised priority assessment list**

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must publish a notice inviting people to make comments on the place.
- (2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.
- (3) A notice under subsection (1), in relation to a place or places:
  - (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
  - (b) must identify the place or places to which the notice relates; and
  - (c) must invite people to make comments, to the Australian Heritage Council, about:
    - (i) whether the place or places meet any of the National Heritage criteria; and
    - (ii) whether the place or places should be included in the National Heritage List; and
  - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
  - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
  - (f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and
  - (g) may also include any other information that the Australian Heritage Council considers appropriate.
- (4) The regulations must provide for the following:
  - (a) how a notice under subsection (1) is to be published;
  - (b) the manner and form for making comments.

**324JH Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister**

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must (by the time required by section 324JI):
    - (a) make a written assessment whether the place meets any of the National Heritage criteria; and
    - (b) give to the Minister:
      - (i) the written assessment (or a copy of it); and
      - (ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).
  - (2) In making an assessment in relation to a place, the Australian Heritage Council, subject to subsections (3) and (4):
    - (a) must take into account the comments the Council receives in response to the notice under subsection 324JG(1) in relation to the place; and
    - (b) may take into account the comments the Council receives in response to the opportunity referred to in paragraph (5)(c); and
    - (c) may seek, and have regard to, information or advice from any source.
  - (3) The Australian Heritage Council is not required to take a comment referred to in paragraph (2)(a) into account if:
    - (a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 324JG(1) in relation to the place; or
    - (b) the Council considers that regulations referred to in paragraph 324JG(4)(b) have not been complied with in relation to the comment.
  - (4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets any of the National Heritage criteria.
  - (5) If, in making an assessment, the Australian Heritage Council considers that a place might have one or more National Heritage values, the Council must:
    - (a) take all practicable steps:
-

- (i) to identify each person who is an owner or occupier of all or part of the place; and
  - (ii) if the Council considers the place might have an indigenous heritage value—to identify each Indigenous person who has rights or interests in all or part of the place; and
  - (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the National Heritage criteria; and
  - (c) give persons advised at least 20 business days to comment in writing whether the place should be included in the National Heritage List.
- (6) If the Australian Heritage Council is satisfied that there are likely to be at least 50 persons referred to in subparagraph (5)(a)(i), the Council may satisfy the requirements of subsection (5) in relation to those persons by including the information referred to in paragraphs (5)(b) and (c) in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
  - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
  - (c) displays in public buildings at or near the place.
- (7) If:
- (a) the Australian Heritage Council considers that the place might have an indigenous heritage value; and
  - (b) there are Indigenous persons who:
    - (i) have rights or interests in all or part of the place; and
    - (ii) are neither owners nor occupiers of all or part of the place; and
  - (c) the Australian Heritage Council is satisfied that there is a body, or there are bodies, that can appropriately represent those Indigenous persons in relation to those rights and interests;
- the Australian Heritage Council may satisfy the requirements of subsection (5) in relation to those Indigenous persons by giving the information referred to in paragraphs (5)(b) and (c) to that body or those bodies.

### 324JI Time by which assessments to be provided to Minister

- (1) Subsection 324JH(1) must be complied with, in relation to a place included in the finalised priority assessment list for an assessment period, by the assessment completion time specified in the list for the place, or by that time as extended under this section.
- (2) The Australian Heritage Council may request the Minister to extend the assessment completion time (or that time as previously extended) if the Council considers that it needs more time to make the assessment.
- (3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.
- (4) An extension under subsection (3) must be made in writing.
- (5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

### 324JJ Decision about inclusion of a place in the National Heritage List

*Minister to decide whether or not to include place*

- (1) After receiving from the Australian Heritage Council an assessment under section 324JH whether a place (the **assessed place**) meets any of the National Heritage criteria, the Minister must:
  - (a) by instrument published in the *Gazette*, include in the National Heritage List:
    - (i) the assessed place or a part of the assessed place; and
    - (ii) the National Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or
  - (b) in writing, decide not to include the assessed place in the National Heritage List.

Note: The Minister may include a place in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values (see subsection 324C(2)).

- (2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
- (3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
- (4) Particulars of an extension or further extension under subsection (3) must be published on the Internet and in any other way required by the regulations.
- (5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:
  - (a) the Minister must have regard to:
    - (i) the Australian Heritage Council's assessment whether the assessed place meets any of the National Heritage criteria; and
    - (ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and
  - (b) the Minister may seek, and have regard to, information or advice from any source.

*Additional requirements if Minister decides to include place*

- (6) If the Minister includes the assessed place, or a part of the assessed place (the ***listed part of the assessed place***), in the National Heritage List, he or she must, within a reasonable time:
  - (a) take all practicable steps to:
    - (i) identify each person who is an owner or occupier of all or part of the assessed place; and
    - (ii) advise each person identified that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
  - (b) if the assessed place:
    - (i) was nominated; or
    - (ii) was included in a place that was nominated; or
    - (iii) includes a place that was nominated;

- by a person in response to a notice under subsection 324J(1)—advise the person that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
- (c) publish a copy of the instrument referred to in paragraph (1)(a) on the Internet; and
  - (d) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.
- (7) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (6)(a)(i), the Minister may satisfy the requirements of paragraph (6)(a) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the assessed place is located;
  - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the assessed place;
  - (c) displays in public buildings at or near the assessed place.

*Additional requirements if Minister decides not to include place*

- (8) If the Minister decides not to include the assessed place in the National Heritage List, the Minister must, within 10 business days after making the decision:
- (a) publish the decision on the Internet; and
  - (b) if the assessed place:
    - (i) was nominated; or
    - (ii) was included in a place that was nominated; or
    - (iii) includes a place that was nominated;by a person in response to a notice under subsection 324J(1)—advise the person of the decision, and of the reasons for the decision.

Note: Subsection (8) applies in a case where the Minister decides that none of the assessed place is to be included in the National Heritage List.



**Subdivision BB—Inclusion of places in the National Heritage List: emergency process**

**324JK Simplified outline**

The following is a simplified outline of this Subdivision:

This Subdivision sets out the emergency process for the inclusion of places in the National Heritage List.

The emergency process involves the following steps:

- (a) the Minister may include a place in the National Heritage List if it is under threat (see section 324JL);
- (b) the Minister asks the Australian Heritage Council to assess the place (see section 324JM);
- (c) the Australian Heritage Council publishes notice of the listing and invites comments (see section 324JN);
- (d) the Australian Heritage Council assesses the place, and gives the assessment to the Minister (see sections 324JO and 324JP);
- (e) the Minister has 12 months from the listing of the place to decide whether it should continue to be listed, and the listing will lapse if the Minister does not make a decision within that period (see section 324JQ).

**324JL Minister may include place in National Heritage List if under threat**

- (1) If the Minister believes that:
  - (a) a place has or may have one or more National Heritage values; and
  - (b) any of those values is under threat of a significant adverse impact; and

(c) that threat is both likely and imminent;  
the Minister may, by instrument published in the *Gazette*, include in the National Heritage List the place and the National Heritage values the Minister believes the place has or may have.

(2) If:

- (a) the place is included in the National Heritage List under subsection (1); and
- (b) before that inclusion of the place, the place was being considered for inclusion in the List under the process set out in Subdivision BA;

that process ceases to apply to the place when it is included in the List under subsection (1).

Note: Subsection (2) does not prevent the process in Subdivision BA again starting to apply to the place if (for example) the place ceases to be listed because of subsection 324JQ(1) or (4) and a person subsequently nominates the place under that Subdivision.

(3) If the place is included in the National Heritage List under subsection (1), the Minister must:

- (a) within 10 business days after the inclusion of the place, publish a copy of the instrument under subsection (1):
  - (i) on the Internet; and
  - (ii) in accordance with any other requirements specified in the regulations; and
- (b) take all practicable steps to:
  - (i) identify each person who is an owner or occupier of all or part of the place; and
  - (ii) advise each person identified that the place has been included in the National Heritage List.

(4) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (3)(b)(i), the Minister may satisfy the requirements of paragraph (3)(b) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
- (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
- (c) displays in public buildings at or near the place.

### **324JM Minister to ask Australian Heritage Council for assessment**

- (1) If the Minister includes a place in the National Heritage List under section 324JL, the Minister must, in writing, request the Australian Heritage Council to give the Minister an assessment of whether the place meets any of the National Heritage criteria.
- (2) The request must specify the assessment completion time for the assessment.

Note: When specifying an assessment completion time, the 12-month period referred to in subsection 324JQ(1) should be considered.

### **324JN Publication of listing of place and inviting comments**

- (1) If the Australian Heritage Council receives a request under subsection 324JM(1) in relation to a place that has been included in the National Heritage List, the Council must publish a notice inviting people to comment on the listing of the place.
- (2) A notice under subsection (1) in relation to a place:
  - (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
  - (b) must contain the following:
    - (i) a description of the place;
    - (ii) a statement that the place has been included in the National Heritage List, and that specifies the National Heritage values that have been included in the List in relation to the place;
    - (iii) the date on which the place was so included; and
  - (c) must invite people to make comments, to the Australian Heritage Council, about:
    - (i) whether the place meets any of the National Heritage criteria; and
    - (ii) whether the place should continue to be included in the National Heritage List; and
  - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and

- (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (3)(b), apply to making comments.
- (3) The regulations may provide for either or both of the following:
  - (a) how a notice under subsection (1) is to be published;
  - (b) the manner and form for making comments.

**324JO Australian Heritage Council to assess place and give assessment to Minister**

- (1) Section 324JH applies in relation to a request under subsection 324JM(1) as if:
  - (a) a reference in section 324JH to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and
  - (b) a reference in section 324JH to the notice under subsection 324JG(1) in relation to the place were a reference to the notice under subsection 324JN(1) in relation to the place; and
  - (c) a reference in section 324JH to regulations referred to in paragraph 324JG(4)(b) were a reference to regulations referred to in paragraph 324JN(3)(b); and
  - (d) a reference in section 324JH to whether the place should be included in the National Heritage List were a reference to whether the place should continue to be included in the National Heritage List.
- (2) A reference in another provision of this Act to section 324JH, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

**324JP Time by which assessments to be provided to Minister**

- (1) Section 324JI applies in relation to a request under subsection 324JM(1) as if:
  - (a) a reference in section 324JI to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and
  - (b) a reference in section 324JI to the assessment completion time specified in the list for the place were a reference to the assessment completion time specified in the request.

- (2) A reference in another provision of this Act to section 324JI, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

### **324JQ Decision about place remaining in the National Heritage List**

*Minister to decide whether place should remain listed*

- (1) Within 12 months after the inclusion of a place in the National Heritage List under section 324JL, the Minister must, by instrument published in the *Gazette*, subject to subsections (2) and (3):
- (a) do one of the following:
- (i) state that the place remains in the National Heritage List with its boundary unaltered;
  - (ii) alter the boundary of the place described in the National Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
  - (iii) remove from the National Heritage List the place and its National Heritage values; and
- (b) if the place is not removed from the National Heritage List under subparagraph (a)(iii)—do all or any of the following:
- (i) state that specified National Heritage values included in the List under section 324JL for the place remain in the List for the place;
  - (ii) include in the List for the place specified National Heritage values of the place that were not included in the List under section 324JL for the place;
  - (iii) remove from the List for the place specified National Heritage values that were included in the List under section 324JL for the place.
- (2) The Minister must not take action under subsection (1) unless the Minister has received an assessment from the Australian Heritage Council under section 324JH in relation to the place.
- (3) The Minister must not take action under subsection (1) that results in the place remaining in the National Heritage List (whether or not with the same or a different boundary) unless the Minister is satisfied that the place has one or more National Heritage values.

*Listing lapses automatically if action not taken within 12 months of listing*

- (4) If the Minister does not take action under subsection (1) within the period referred to in that subsection, the place, and its listed National Heritage values, are automatically removed from the National Heritage List, by force of this subsection, at the end of that period.

Note: This subsection applies even if the Minister is prevented from taking action under subsection (1) because of subsection (2).

*Matters to be considered*

- (5) For the purpose of deciding what action to take under subsection (1) in relation to the place:
- (a) the Minister must have regard to:
    - (i) the Australian Heritage Council's assessment whether the place meets any of the National Heritage criteria; and
    - (ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and
  - (b) the Minister may seek, and have regard to, information or advice from any source.

*Disapplying section 324L*

- (6) Section 324L does not apply to:
- (a) an alteration of the boundary of the place, under subparagraph (1)(a)(ii) of this section, that has the effect of removing part of the place from the National Heritage List; or
  - (b) the removal of the place and its National Heritage values under subparagraph (1)(a)(iii) of this section; or
  - (c) the removal of a National Heritage value of the place under subparagraph (1)(b)(iii) of this section.

*Minister to publish copy or summary of subsection (1) notice*

- (7) The Minister must publish a copy or summary of the instrument referred to in subsection (1). The regulations may specify how the publication is to be made. Subject to any such regulations, the
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publication must be made in a way that the Minister considers appropriate.

*Additional requirements if place etc. is removed under subsection (1)*

- (8) If, under subsection (1), the Minister removes from the National Heritage List the place or a National Heritage value of the place, or alters the boundary of the place described in the List, the Minister must, within 10 business days after the removal or alteration:
- (a) publish a copy of the instrument referred to in subsection (1) on the Internet; and
  - (b) advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal or alteration.

Note: For the obligation to identify owners or occupiers, see subsection 324JL(3).

*Requirements if place is removed under subsection (4)*

- (9) If, under subsection (4), the place, and its listed National Heritage values, are removed from the National Heritage List, the Minister must, within 10 business days after the removal:
- (a) publish notice of the removal on the Internet; and
  - (b) advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal.

Note: For the obligation to identify owners or occupiers, see subsection 324JL(3).

*Alternative methods of notifying owners and occupiers*

- (10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Minister may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
  - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
  - (c) displays in public buildings at or near the place.

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**Subdivision BC—Other provisions relating to the National Heritage List**

**324JR Co-ordination with Scientific Committee—Council undertaking assessment**

- (1) This section applies if:
  - (a) the Australian Heritage Council undertakes an assessment of a place under Subdivision BA or Subdivision BB; and
  - (b) before giving the assessment to the Minister, the Council becomes aware that:
    - (i) the Scientific Committee is undertaking, or has undertaken, an assessment under Division 1 of Part 13; and
    - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (3) Before the Australian Heritage Council gives an assessment of the place to the Minister under Subdivision BA or Subdivision BB, the Council must comply with subsection (4) or (6).
- (4) If the Scientific Committee has not yet given the Minister an assessment that deals with that matter, the Australian Heritage Council must:
  - (a) give the Scientific Committee a copy of the assessment of the place that the Council proposes to give to the Minister; and
  - (b) invite the Scientific Committee to give the Council its comments in relation to that matter; and
  - (c) take into account, in finalising the assessment of the place that the Council gives the Minister, any comments that the Scientific Committee makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.
- (5) If the Australian Heritage Council gives the Scientific Committee a copy of a proposed assessment of a place under paragraph (4)(a),



the Council must also give the Scientific Committee a copy of the assessment of that place that the Council gives the Minister.

- (6) If:
- (a) the Scientific Committee has already given the Minister an assessment that deals with that matter; and
  - (b) the Australian Heritage Council has been given a copy of that assessment;
- the Australian Heritage Council must take that assessment into account in finalising the assessment of the place that the Council gives the Minister.
- (7) If, under section 194S or 194T, the Scientific Committee gives the Australian Heritage Council a proposed assessment, or an assessment, that deals with a particular matter because the Council is undertaking an assessment that deals with that matter, a member of the Council may discuss that matter with a member of the Scientific Committee.
- (8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 324R.

**324JS Co-ordination with Scientific Committee—Council given assessment to Minister**

- (1) This section applies if:
- (a) the Australian Heritage Council has given to the Minister an assessment of a place under Subdivision BA or Subdivision BB; and
  - (b) the Council is aware that:
    - (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and
    - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) The Australian Heritage Council must, within 7 days after becoming aware as referred to in paragraph (1)(b):
- (a) ensure the Scientific Committee is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
  - (b) give the Scientific Committee a copy of the assessment.

(3) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.

(4) Subsections (2) and (3) have effect despite section 324R.

**551 Subsection 324K(1)**

Omit “this Subdivision that is before this section and”, substitute “Subdivision BA or BB”.

**552 Subsection 324K(1)**

Omit “an earlier provision of this Subdivision”, substitute “an earlier provision of that Subdivision”.

**553 Subsection 324L(1) (note)**

Omit “324J(5)”, substitute “324JQ(1)”.

**554 Subsection 324M(6)**

Repeal the subsection.

**555 Section 324N**

Repeal the section, substitute:

**324N Specifying one or more additional National Heritage values for a National Heritage place**

- (1) The regulations may make provision for, or in relation to, the specification in the National Heritage List of additional National Heritage values in relation to National Heritage places.
  - (2) Without limiting the generality of subsection (1), regulations may make provision as mentioned in that subsection by specifying modifications of provisions of this Act. However, regulations must not:
    - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
    - (b) widen, or have the effect of widening, the scope of any offence.
  - (3) In this section:

*modifications* includes additions, omissions or substitutions.
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**556 Paragraph 324R(1)(a)**

Omit “324G”, substitute “324JH”.

**557 Paragraph 324R(2)(a)**

Repeal the paragraph, substitute:

- (a) the duty not to disclose a thing described in paragraph (1)(a) in relation to a place does not exist after:
  - (i) publication in the *Gazette* of an instrument under paragraph 324JJ(1)(a) or subsection 324JQ(1) in relation to the place; or
  - (ii) the Minister decides under paragraph 324JJ(1)(b) not to include the place in the National Heritage List; and

**558 Subparagraph 324R(2)(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) the Minister decides under section 324M not to remove the place or a part of the place, or one or more of the place’s National Heritage values, from the National Heritage List.

**559 After subsection 324R(2)**

Insert:

- (2A) This section does not prevent the Australian Heritage Council from informing a person, or having discussions with a person, about the consequences that result or may result from:
  - (a) a place being, or not being, included in the National Heritage List; or
  - (b) National Heritage values of a place being, or not being, included in the List; or
  - (c) a place or part of a place, or one or more National Heritage values of a place, being removed from the List.
- (2B) Subsection (1) does not apply to a disclosure of particular information if:
  - (a) the Chair of the Australian Heritage Council requests the Minister to give permission to disclose that information to a particular person (or persons within a particular group of persons); and
  - (b) the Minister gives that permission; and

- (c) the disclosure is made to that person (or a person within that group).

**560 Paragraph 324R(3)(a)**

Omit “324G”, substitute “324JH”.

**561 Subsection 324S(1)**

Repeal the subsection (not including the note), substitute:

- (1) The Minister must make a written plan to protect and manage the National Heritage values of each National Heritage place that is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the first time the place satisfies both of the following paragraphs:
- (a) the place is included in the National Heritage List;
  - (b) the place is entirely within one or more Commonwealth areas.

**562 At the end of section 324S**

Add:

- (7) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument.

**563 Paragraph 324Y(2)(c)**

Repeal the paragraph, substitute:

- (c) either or both of the following:
- (i) a Commonwealth area;
  - (ii) a Territory; or

**564 Subsection 341C(1)**

After “this Subdivision”, insert “and Subdivisions BA, BB and BC”.

**565 Subsection 341C(1) (note)**

Repeal the note.

**566 Subsection 341C(2)**

Repeal the subsection, substitute:

- (2) A place may be included in the Commonwealth Heritage List only if:
- (a) the place either:
    - (i) is entirely within a Commonwealth area; or
    - (ii) is outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth Authority; and
  - (b) the Minister is satisfied that the place has one or more Commonwealth Heritage values (subject to the provisions in Subdivision BB about the emergency process).
- (3) A place that is included in the Commonwealth Heritage List is called a *Commonwealth Heritage place*.
- (4) The Commonwealth Heritage List is not a legislative instrument.

### **567 Sections 341E to 341J**

Repeal the sections, substitute:

### **Subdivision BA—Inclusion of places in the Commonwealth Heritage List: usual process**

#### **341E Simplified outline**

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 341G).

The usual process involves the following steps for each assessment period:

- (a) the Minister invites people to nominate places for inclusion in the Commonwealth Heritage List, and gives the nominations to the Australian Heritage Council (see sections 341H and 341J);

- (b) the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will mostly be places that have been nominated) that it thinks should be assessed (see sections 341JA, 341JB and 341JC);
- (c) the Minister finalises the list of places that are to be assessed (see sections 341JD and 341JE);
- (d) the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 341JF);
- (e) the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 341JG and 341JH);
- (f) the Minister decides whether a place that has been assessed should be included in the Commonwealth Heritage List (see section 341JI).

The steps mentioned in paragraphs (a) to (c) will generally be completed before the start of the assessment period.

### 341F Definitions

In this Subdivision:

*assessment period* has the meaning given by subsection 341G(1).

*eligible for assessment consideration*, in relation to an assessment period, has the meaning given by subsection 341JA(3).

*finalised priority assessment list* for an assessment period has the meaning given by subsection 341JD(4).

*proposed priority assessment list* for an assessment period has the meaning given by subsection 341JA(1).

### 341G Meaning of *assessment period*

- (1) For the purposes of this Subdivision, each of the following is an *assessment period*:

- (a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph;
  - (b) each period of 12 months starting on an anniversary of the day so determined.
- (2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.
- (3) A determination under paragraph (1)(a) is a legislative instrument, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the determination.

### **341H Minister to invite nominations for each assessment period**

- (1) Before the start of each assessment period, the Minister must publish a notice inviting people to nominate places for inclusion in the Commonwealth Heritage List.

Note: For which places can be included in the Commonwealth Heritage List, see subsection 341C(2).

- (2) A notice under subsection (1):
- (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
  - (b) must invite people to nominate, to the Minister, places for inclusion in the Commonwealth Heritage List; and
  - (c) must identify the assessment period to which the notice relates; and
  - (d) must specify a date (the *cut-off date*) by which nominations must be received, which must be at least 40 business days after the notice has been published as required by paragraph (a); and
  - (e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and
  - (f) may also include any other information that the Minister considers appropriate.
- (3) The regulations must provide for the following:
- (a) how a notice under subsection (1) is to be published;

- (b) the manner and form for making nominations;
- (c) what information is to be included in a nomination.

### **341J Minister to give nominations to Australian Heritage Council**

#### *Nominations in relation to first assessment period*

- (1) Within 30 business days after the cut-off date specified in the notice under subsection 341H(1) for the first assessment period, the Minister must give the Australian Heritage Council the nominations that the Minister:
  - (a) had received before the end of that cut-off date; and
  - (b) had not already requested the Australian Heritage Council, under section 341E (as in force before the commencement of this section), to assess; and
  - (c) had not already rejected under section 341E (as in force before the commencement of this section); and
  - (d) does not reject under subsection (4).
- (2) Subsection (1) does not apply to a nomination of a place if the Minister had, before the commencement of this section, included the place in the Commonwealth Heritage List under section 341F (as in force before the commencement of this section).

#### *Nominations in relation to later assessment periods*

- (3) Within 30 business days after the cut-off date (the **current cut-off date**) specified in the notice under subsection 341H(1) for an assessment period (other than the first), the Minister must give the Australian Heritage Council the nominations that were received by the Minister in the period:
  - (a) starting immediately after the end of the cut-off date specified in the notice under subsection 341H(1) for the immediately preceding assessment period; and
  - (b) ending at the end of the current cut-off date;other than any such nominations that the Minister has rejected under subsection (4).

#### *Minister may reject nominations*

- (4) The Minister may, in writing, reject a nomination if the Minister considers that:



- (a) the nomination is vexatious, frivolous or not made in good faith; or
  - (b) the Minister considers that regulations referred to in paragraph 341H(3)(b) or (c) have not been complied with in relation to the nomination.
- (5) If a nomination is rejected under paragraph (4)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

*Definition*

- (6) In this section:

***nomination*** means a nomination of a place for inclusion in the Commonwealth Heritage List.

**341JA Australian Heritage Council to prepare proposed priority assessment list**

- (1) Within 40 business days after the Australian Heritage Council receives the nominations as required by subsection 341J(1) in relation to an assessment period, the Council must prepare and give to the Minister a list (the ***proposed priority assessment list***) for the assessment period.
- (2) The proposed priority assessment list is to consist of such of the places that are eligible for assessment consideration in relation to the assessment period as the Australian Heritage Council considers it appropriate to include in the list, having regard to:
  - (a) the Council's own views about what should be given priority in relation to the assessment period; and
  - (b) the Council's capacity to make assessments under this Division while still performing its other functions; and
  - (c) any other matters that the Council considers appropriate.
- (3) A place is ***eligible for assessment consideration*** in relation to the assessment period if:
  - (a) the place has been nominated by a nomination referred to in subsection (1); or
  - (b) the Council itself wishes to nominate the place for inclusion in the Commonwealth Heritage List; or

- (c) the place was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) but was not included in the finalised priority assessment list for that assessment period; or
  - (d) each part of the place is either a place to which paragraph (a) applies, a place to which paragraph (b) applies or a place to which paragraph (c) applies.
- (4) Without limiting the generality of the Australian Heritage Council's discretion under subsection (2), the Council does not have to include in the proposed priority assessment list a place that has been nominated if the Council considers that it is unlikely that the place has any Commonwealth Heritage values. For this purpose, the Council is not required to have regard to any information beyond the information that was included in the nomination.
- (5) The proposed priority assessment list is not a legislative instrument.

**341JB Matters to be included in proposed priority assessment list**

- (1) The proposed priority assessment list for an assessment period is to include, for each place in the list:
- (a) a description of the place; and
  - (b) an assessment completion time; and
  - (c) any other information required by the regulations.
- (2) The assessment completion time for a place must be either:
- (a) a time that is at or before the end of the assessment period to which the list relates; or
  - (b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period).

**341JC Statement to be given to Minister with proposed priority assessment list**

- (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must
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also give the Minister a statement setting out such information as the Council considers appropriate relating to:

- (a) for each place that is included in the list—why the Council included the place in the list; and
  - (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 341JA(3)(a) or (c)—why the Council did not include the place in the list.
- (2) The statement must also identify, as places nominated by the Australian Heritage Council:
- (a) any places that are included in the list because the Council itself wishes to nominate them (see paragraph 341JA(3)(b)); and
  - (b) any places that are included in the list because of paragraph 341JA(3)(d) that consist of one or more places to which paragraph 341JA(3)(b) applies.

### **341JD The finalised priority assessment list**

- (1) Within 20 business days after the Minister, under section 341JA, receives the proposed priority assessment list for an assessment period, the Minister may, in writing, make changes to the list as mentioned in subsection (2).
- (2) The changes the Minister may make are as follows:
  - (a) including a place in the list (and also including the matters referred to in subsection 341JA(1));
  - (b) omitting a place from the list (and also omitting the matters referred to in subsection 341JA(1));
  - (c) changing the assessment completion time for a place in the list;
  - (d) any other changes of a kind permitted by the regulations.
- (3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.
- (4) At the end of the period of 20 business days referred to in subsection (1), the list, as changed (if at all) by the Minister, becomes the ***finalised priority assessment list*** for the assessment period.

- (5) The Minister must notify the Australian Heritage Council of all changes that the Minister makes to the list.
- (6) The finalised priority assessment list is not a legislative instrument.

**341JE Publication of finalised priority assessment list**

- (1) The Australian Heritage Council must publish the finalised priority assessment list for an assessment period on the Internet.
- (2) The Australian Heritage Council must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

**341JF Australian Heritage Council to invite comments on places in finalised priority assessment list**

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must publish a notice inviting people to make comments on the place.
- (2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.
- (3) A notice under subsection (1), in relation to a place or places:
  - (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
  - (b) must identify the place or places to which the notice relates; and
  - (c) must invite people to make comments, to the Australian Heritage Council, about:
    - (i) whether the place or places meet any of the Commonwealth Heritage criteria; and
    - (ii) whether the place or places should be included in the Commonwealth Heritage List; and
  - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and

- (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
  - (f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and
  - (g) may also include any other information that the Australian Heritage Council considers appropriate.
- (4) The regulations must provide for the following:
- (a) how a notice under subsection (1) is to be published;
  - (b) the manner and form for making comments.

**341JG Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister**

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must (by the time required by section 341JH):
- (a) make a written assessment whether the place meets any of the Commonwealth Heritage criteria; and
  - (b) give to the Minister:
    - (i) the written assessment (or a copy of it); and
    - (ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).
- (2) In making an assessment in relation to a place, the Australian Heritage Council, subject to subsections (3) and (4):
- (a) must take into account the comments the Council receives in response to the notice under subsection 341JF(1) in relation to the place; and
  - (b) may take into account the comments the Council receives in response to the opportunity referred to in paragraph (5)(c); and
  - (c) may seek, and have regard to, information or advice from any source.
- (3) The Australian Heritage Council is not required to take a comment referred to in paragraph (2)(a) into account if:

- (a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 341JF(1) in relation to the place; or
  - (b) the Council considers that regulations referred to in paragraph 341JF(4)(b) have not been complied with in relation to the comment.
- (4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets any of the Commonwealth Heritage criteria.
- (5) If, in making an assessment, the Australian Heritage Council considers that a place within the Australian jurisdiction might have one or more Commonwealth Heritage values, the Council must:
  - (a) take all practicable steps:
    - (i) to identify each person who is an owner or occupier of all or part of the place; and
    - (ii) if the Council considers the place might have an indigenous heritage value—to identify each Indigenous person who has rights or interests in all or part of the place; and
  - (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the Commonwealth Heritage criteria; and
  - (c) give persons advised at least 20 business days to comment in writing whether the place should be included in the Commonwealth Heritage List.
- (6) If the Australian Heritage Council is satisfied that there are likely to be at least 50 persons referred to in subparagraph (5)(a)(i), the Council may satisfy the requirements of subsection (5) in relation to those persons by including the information referred to in paragraphs (5)(b) and (c) in one or more of the following:
  - (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
  - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
  - (c) displays in public buildings at or near the place.
- (7) If:

- (a) the Australian Heritage Council considers that the place might have an indigenous heritage value; and
- (b) there are Indigenous persons who:
  - (i) have rights or interests in all or part of the place; and
  - (ii) are neither owners nor occupiers of all or part of the place; and
- (c) the Australian Heritage Council is satisfied that there is a body, or there are bodies, that can appropriately represent those Indigenous persons in relation to those rights and interests;

the Australian Heritage Council may satisfy the requirements of subsection (5) in relation to those Indigenous persons by giving the information referred to in paragraphs (5)(b) and (c) to that body or those bodies.

### **341JH Time by which assessments to be provided to Minister**

- (1) Subsection 341JG(1) must be complied with, in relation to a place included in the finalised priority assessment list for an assessment period, by the assessment completion time specified in the list for the place, or by that time as extended under this section.
- (2) The Australian Heritage Council may request the Minister to extend the assessment completion time (or that time as previously extended) if the Council considers that it needs more time to make the assessment.
- (3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.
- (4) An extension under subsection (3) must be made in writing.
- (5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

### 341JI Decision about inclusion of a place in the Commonwealth Heritage List

*Minister to decide whether or not to include place*

- (1) After receiving from the Australian Heritage Council an assessment under section 341JG whether a place (the **assessed place**) meets any of the Commonwealth Heritage criteria, the Minister must:
    - (a) by instrument published in the *Gazette*, include in the Commonwealth Heritage List:
      - (i) the assessed place or a part of the assessed place; and
      - (ii) the Commonwealth Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or
    - (b) in writing, decide not to include the assessed place in the Commonwealth Heritage List.
- Note: The Minister may include a place in the Commonwealth Heritage List only if the Minister is satisfied that the place has one or more Commonwealth Heritage values (see subsection 341C(2)).
- (2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
  - (3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
  - (4) Particulars of an extension or further extension under subsection (3) must be published on the Internet and in any other way required by regulations.
  - (5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:
    - (a) the Minister must have regard to:
      - (i) the Australian Heritage Council's assessment whether the assessed place meets any of the Commonwealth Heritage criteria; and
      - (ii) the comments (if any), a copy of which were given to the Minister under subsection 341JG(1) with the assessment; and



- (b) the Minister may seek, and have regard to, information or advice from any source.

*Additional requirements if Minister decides to include place*

- (6) If the Minister includes the assessed place, or a part of the assessed place (the **listed part of the assessed place**), in the Commonwealth Heritage List, he or she must, within a reasonable time:
  - (a) take all practicable steps to:
    - (i) identify each person who is an owner or occupier of all or part of the assessed place; and
    - (ii) advise each person identified that the assessed place, or the listed part of the assessed place, has been included in the Commonwealth Heritage List; and
  - (b) if the assessed place:
    - (i) was nominated; or
    - (ii) was included in a place that was nominated; or
    - (iii) includes a place that was nominated;by a person in response to a notice under subsection 341H(1)—advise the person that the assessed place, or the listed part of the assessed place, has been included in the Commonwealth Heritage List; and
  - (c) publish a copy of the instrument referred to in paragraph (1)(a) on the Internet; and
  - (d) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.
- (7) Paragraph (6)(a) does not apply unless the assessed place is within the Australian jurisdiction.
- (8) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (6)(a)(i), the Minister may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
  - (a) advertisements in a newspaper, or newspapers, circulating in the area in which the assessed place is located;
  - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the assessed place;
  - (c) displays in public buildings at or near the assessed place.

*Additional requirements if Minister decides not to include place*

- (9) If the Minister decides not to include the assessed place in the Commonwealth Heritage List, the Minister must, within 10 business days after making the decision:
- (a) publish the decision on the Internet; and
  - (b) if the assessed place:
    - (i) was nominated; or
    - (ii) was included in a place that was nominated; or
    - (iii) includes a place that was nominated;by a person in response to a notice under subsection 341H(1)—advise the person of the decision, and of the reasons for the decision.

Note: Subsection (9) applies in a case where the Minister decides that none of the assessed place is to be included in the Commonwealth Heritage List.

**Subdivision BB—Inclusion of places in the Commonwealth Heritage List: emergency process**

**341JJ Simplified outline**

The following is a simplified outline of this Subdivision:

This Subdivision sets out the emergency process for the inclusion of places in the Commonwealth Heritage List.

The emergency process involves the following steps:

- (a) the Minister may include a place in the Commonwealth Heritage List if it is under threat (see section 341JK);
- (b) the Minister asks the Australian Heritage Council to assess the place (see section 341JL);
- (c) the Australian Heritage Council publishes notice of the listing and invites comments (see section 341JM);

- (d) the Australian Heritage Council assesses the place, and gives the assessment to the Minister (see sections 341JN and 341JO);
- (e) the Minister has 12 months from the listing of the place to decide whether it should continue to be listed, and the listing will lapse if the Minister does not make a decision within that period (see section 341JP).

**341JK Minister may include place in Commonwealth Heritage List if under threat**

- (1) If the Minister believes:
- (a) a place has or may have one or more Commonwealth Heritage values; and
  - (b) any of those values is under threat of a significant adverse impact; and
  - (c) that threat is both likely and imminent;
- the Minister may, by instrument published in the *Gazette*, include in the Commonwealth Heritage List the place and the Commonwealth Heritage values the Minister believes the place has or may have.

Note: For which places can be included in the Commonwealth Heritage List, see subsection 341C(2).

- (2) If:
- (a) the place is included in the Commonwealth Heritage List under subsection (1); and
  - (b) before that inclusion of the place, the place was being considered for inclusion in the List under the process set out in Subdivision BA;
- that process ceases to apply to the place when it is included in the List under subsection (1).

Note: Subsection (2) does not prevent the process in Subdivision BA again starting to apply to the place if (for example) the place ceases to be listed because of subsection 341JP(1) or (4) and a person subsequently nominates the place under that Subdivision.

- (3) If the place is included in the Commonwealth Heritage List under subsection (1), the Minister must:

- (a) in any case—within 10 business days after the inclusion of the place, publish a copy of the instrument under subsection (1):
    - (i) on the Internet; and
    - (ii) in accordance with any other requirements specified in the regulations; and
  - (b) if the place is within the Australian jurisdiction—take all practicable steps to:
    - (i) identify each person who is an owner or occupier of all or part of the place; and
    - (ii) advise each person identified that the place has been included in the Commonwealth Heritage List.
- (4) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (3)(b)(i), the Minister may satisfy the requirements of paragraph (3)(b) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
  - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
  - (c) displays in public buildings at or near the place.

#### **341JL Minister to ask Australian Heritage Council for assessment**

- (1) If the Minister includes a place in the Commonwealth Heritage List under section 341JK, the Minister must, in writing, request the Australian Heritage Council to give the Minister an assessment of whether the place meets any of the Commonwealth Heritage criteria.
- (2) The request must specify the assessment completion time for the assessment.

Note: When specifying an assessment completion time, the 12-month period referred to in subsection 341JP(1) should be considered.

#### **341JM Publication of listing of place and inviting comments**

- (1) If the Australian Heritage Council receives a request under subsection 341JL(1) in relation to a place that has been included in
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the Commonwealth Heritage List, the Council must publish a notice inviting people to comment on the listing of the place.

- (2) A notice under subsection (1) in relation to a place:
- (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
  - (b) must contain the following:
    - (i) a description of the place;
    - (ii) a statement that the place has been included in the Commonwealth Heritage List, and that specifies the Commonwealth Heritage values that have been included in the List in relation to the place;
    - (iii) the date on which the place was so included; and
  - (c) must invite people to make comments, to the Australian Heritage Council, about:
    - (i) whether the place meets any of the Commonwealth Heritage criteria; and
    - (ii) whether the place should continue to be included in the Commonwealth Heritage List; and
  - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
  - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (3)(b), apply to making comments.
- (3) The regulations may provide for either or both of the following:
- (a) how a notice under subsection (1) is to be published;
  - (b) the manner and form for making comments.

**341JN Australian Heritage Council to assess place and give assessment to Minister**

- (1) Section 341JG applies in relation to a request under subsection 341JL(1) as if:
- (a) a reference in section 341JG to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and

- (b) a reference in section 341JG to the notice under subsection 341JF(1) in relation to the place were a reference to the notice under subsection 341JM(1) in relation to the place; and
  - (c) a reference in section 341JG to regulations referred to in paragraph 341JF(4)(b) were a reference to regulations referred to in paragraph 341JM(3)(b); and
  - (d) a reference in section 341JG to whether the place should be included in the Commonwealth Heritage List were a reference to whether the place should continue to be included in the Commonwealth Heritage List.
- (2) A reference in another provision of this Act to section 341JG, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

**341JO Time by which assessments to be provided to Minister**

- (1) Section 341JH applies in relation to a request under subsection 341JL(1) as if:
- (a) a reference in section 341JH to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and
  - (b) a reference in section 341JH to the assessment completion time specified in the list for the place were a reference to the assessment completion time specified in the request.
- (2) A reference in another provision of this Act to section 341JH, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

**341JP Decision about place remaining in the Commonwealth Heritage List**

*Minister to decide whether place should remain listed*

- (1) Within 12 months after the inclusion of a place in the Commonwealth Heritage List under section 341JK, the Minister must, by instrument published in the *Gazette*, subject to subsections (2) and (3):
- (a) do one of the following:

- (i) state that the place remains in the Commonwealth Heritage List with its boundary unaltered;
  - (ii) alter the boundary of the place described in the Commonwealth Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
  - (iii) remove from the Commonwealth Heritage List the place and its Commonwealth Heritage values; and
- (b) if the place is not removed from the Commonwealth Heritage List under subparagraph (a)(iii)—do all or any of the following:
- (i) state that specified Commonwealth Heritage values included in the List under section 341JK for the place remain in the List for the place;
  - (ii) include in the List for the place specified Commonwealth Heritage values of the place that were not included in the List under section 341JK for the place;
  - (iii) remove from the List for the place specified Commonwealth Heritage values that were included in the List under section 341JK for the place.
- (2) The Minister must not take action under subsection (1) unless the Minister has received an assessment from the Australian Heritage Council under section 341JG in relation to the place.
- (3) The Minister must not take action under subsection (1) that results in the place remaining in the Commonwealth Heritage List (whether or not with the same or a different boundary) unless the Minister is satisfied that the place has one or more Commonwealth Heritage values.

*Listing lapses automatically if action not taken within 12 months of listing*

- (4) If the Minister does not take action under subsection (1) within the period referred to in that subsection, the place, and its listed Commonwealth Heritage values, are automatically removed from the Commonwealth Heritage List, by force of this subsection, at the end of that period.

Note: This subsection applies even if the Minister is prevented from taking action under subsection (1) because of subsection (2).

*Matters to be considered*

- (5) For the purpose of deciding what action to take under subsection (1) in relation to the place:
- (a) the Minister must have regard to:
    - (i) the Australian Heritage Council's assessment whether the place meets any of the Commonwealth Heritage criteria; and
    - (ii) the comments (if any), a copy of which were given to the Minister under subsection 341JG(1) with the assessment; and
  - (b) the Minister may seek, and have regard to, information or advice from any source.

*Disapplying section 341L*

- (6) Section 341L does not apply to:
- (a) an alteration of the boundary of the place, under subparagraph (1)(a)(ii) of this section, that has the effect of removing part of the place from the Commonwealth Heritage List; or
  - (b) the removal of the place and its Commonwealth Heritage values under subparagraph (1)(a)(iii) of this section; or
  - (c) the removal of a Commonwealth Heritage value of the place under subparagraph (1)(b)(iii) of this section.

*Minister to publish copy or summary of subsection (1) notice*

- (7) The Minister must publish a copy or summary of the instrument referred to in subsection (1). The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way that the Minister considers appropriate.

*Additional requirements if place etc. is removed under subsection (1)*

- (8) If, under subsection (1), the Minister removes from the Commonwealth Heritage List the place or a Commonwealth Heritage value of the place, or alters the boundary of the place described in the List, the Minister must, within 10 business days after the removal or alteration:



- (a) in any case—publish a copy of the instrument referred to in subsection (1) on the Internet; and
- (b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal or alteration.

Note: For the obligation to identify owners or occupiers, see subsection 341JK(3).

*Requirements if place is removed under subsection (4)*

- (9) If, under subsection (4), the place, and its listed Commonwealth Heritage values, are removed from the Commonwealth Heritage List, the Minister must, within 10 business days after the removal:
  - (a) in any case—publish notice of the removal on the Internet; and
  - (b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal.

Note: For the obligation to identify owners or occupiers, see subsection 341JK(3).

*Alternative methods of notifying owners and occupiers*

- (10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Council may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
  - (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
  - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
  - (c) displays in public buildings at or near the place.

**Subdivision BC—Other provisions relating to the Commonwealth Heritage List**

**341JQ Co-ordination with Scientific Committee—Council undertaking assessment**

- (1) This section applies if:

- (a) the Australian Heritage Council undertakes an assessment of a place under Subdivision BA or Subdivision BB; and
  - (b) before giving the assessment to the Minister, the Council becomes aware that:
    - (i) the Scientific Committee is undertaking, or has undertaken, an assessment under Division 1 of Part 13; and
    - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (3) Before the Australian Heritage Council gives an assessment of the place to the Minister under Subdivision BA or Subdivision BB, the Council must comply with subsection (4) or (6).
- (4) If the Scientific Committee has not yet given the Minister an assessment that deals with that matter, the Australian Heritage Council must:
- (a) give the Scientific Committee a copy of the assessment of the place that the Council proposes to give to the Minister; and
  - (b) invite the Scientific Committee to give the Council its comments in relation to that matter; and
  - (c) take into account, in finalising the assessment of the place that the Council gives the Minister, any comments that the Scientific Committee makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.
- (5) If the Australian Heritage Council gives the Scientific Committee a copy of a proposed assessment of a place under paragraph (4)(a), the Council must also give the Scientific Committee a copy of the assessment of that place that the Council gives the Minister.
- (6) If:
- (a) the Scientific Committee has already given the Minister an assessment that deals with that matter; and
  - (b) the Australian Heritage Council has been given a copy of that assessment;
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the Australian Heritage Council must take that assessment into account in finalising the assessment of the place that the Council gives the Minister.

- (7) If, under section 194S or 194T, the Scientific Committee gives the Australian Heritage Council a proposed assessment, or an assessment, that deals with a particular matter because the Council is undertaking an assessment that deals with that matter, a member of the Council may discuss that matter with a member of the Scientific Committee.
- (8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 341R.

**341JR Co-ordination with Scientific Committee—Council given assessment to Minister**

- (1) This section applies if:
- (a) the Australian Heritage Council has given to the Minister an assessment of a place under Subdivision BA or Subdivision BB; and
  - (b) the Council is aware that:
    - (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and
    - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) The Australian Heritage Council must, within 7 days after becoming aware as referred to in paragraph (1)(b):
- (a) ensure the Scientific Committee is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
  - (b) give the Scientific Committee a copy of the assessment.
- (3) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (4) Subsections (2) and (3) have effect despite section 341R.

**568 Subsection 341K(1)**

Omit “this Subdivision that is before this section and”, substitute “Subdivision BA or BB”.

**569 Subsection 341K(1)**

Omit “an earlier provision of this Subdivision”, substitute “an earlier provision of that Subdivision”.

**570 Subsection 341L(2) (note)**

Omit “341J(5)”, substitute “341JP(1)”.

**571 Section 341N**

Repeal the section, substitute:

**341N Specifying one or more additional Commonwealth Heritage values for a Commonwealth Heritage place**

- (1) The regulations may make provision for, or in relation to, the specification in the Commonwealth Heritage List of additional Commonwealth Heritage values in relation to Commonwealth Heritage places.
- (2) Without limiting the generality of subsection (1), regulations may make provision as mentioned in that subsection by specifying modifications of provisions of this Act. However, regulations must not:
  - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.

- (3) In this section:

*modifications* includes additions, omissions or substitutions.

**572 Paragraph 341R(1)(a)**

Omit “341G”, substitute “341JG”.

**573 Paragraph 341R(2)(a)**

Repeal the paragraph, substitute:

- (a) the duty not to disclose a thing described in paragraph (1)(a) in relation to a place does not exist after:
  - (i) publication in the *Gazette* of an instrument under paragraph 341JI(1)(a) or subsection 341JP(1) in relation to the place; or

- (ii) the Minister decides under paragraph 341JI(1)(b) not to include the place in the Commonwealth Heritage List; and

**574 Subparagraph 341R(2)(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) the Minister decides under section 341M not to remove the place or a part of the place, or one or more of the place's Commonwealth Heritage values, from the Commonwealth Heritage List.

**575 After subsection 341R(2)**

Insert:

- (2A) This section does not prevent the Australian Heritage Council from informing a person, or having discussions with a person, about the consequences that result or may result from:
  - (a) a place being, or not being, included in the Commonwealth Heritage List; or
  - (b) Commonwealth Heritage values of a place being, or not being, included in the List; or
  - (c) a place or part of a place, or one or more Commonwealth Heritage values of a place, being removed from the List.
- (2B) Subsection (1) does not apply to a disclosure of particular information if:
  - (a) the Chair of the Australian Heritage Council requests the Minister to give permission to disclose that information to a particular person (or persons within a particular group of persons); and
  - (b) the Minister gives that permission; and
  - (c) the disclosure is made to that person (or a person within that group).

**576 Paragraph 341R(3)(a)**

Omit "341G", substitute "341JG".

**577 At the end of section 341S**

Add:

- (8) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument.

**578 Subsection 341T(1) (note)**

Repeal the note.

**579 Section 341ZD**

Repeal the section.

**580 Subdivision F of Division 3A of Part 15**

Repeal the Subdivision.

**581 Paragraph 346(1)(e)**

Repeal the paragraph, substitute:

- (e) assign the reserve to a category (an *IUCN category*) prescribed in regulations made for the purposes of this subsection.

**582 Subsection 347(1)**

Omit “(1)”.

Note: The heading to subsection 347(1) is deleted.

**583 Subparagraph 347(1)(a)(i)**

Repeal the subparagraph, substitute:

- (i) has the characteristics (if any) prescribed by the regulations for the category; and

**584 Subsection 347(2)**

Repeal the subsection.

**585 Section 349**

Repeal the section.

**586 Subsection 354(1) (note)**

Repeal the note.

**587 After subsection 354(1)**

Insert:

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(1A) Subsection (1) does not apply to an action taken in the course of carrying on mining operations.

Note: Mining operations are covered by sections 355, 355A and 387.

**588 Subsection 354(2) (note)**

Repeal the note.

**589 After subsection 354(3)**

Insert:

(3A) Subsection (1) does not apply to an action that is covered by an approval in force under subsection 359B(1). For this purpose, an action is covered by such an approval if:

- (a) a management plan is not in operation for the Commonwealth reserve; and
- (b) the action is, or is in the class of actions, specified in the approval; and
- (c) the action is taken in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

**590 Subparagraph 354(4)(a)(ii)**

Repeal the subparagraph, substitute:

- (ii) section 359A (about traditional use of an area in a reserve); and

**591 After section 354**

Insert:

**354A Offences relating to activities that may only be carried on under management plan**

*Causing death etc to native species or damage to heritage*

- (1) A person commits an offence if:
- (a) the person takes an action; and
  - (b) the action is taken in a Commonwealth reserve; and
  - (c) the action:

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- (i) results in the death, injury, taking, trade, keeping or moving of a member of a native species in the reserve; or
- (ii) results in damage to heritage in the reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

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

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(2) Strict liability applies:

- (a) to paragraph (1)(b); and
- (b) to the physical element of circumstance in paragraph (1)(c), that the member of the native species or the heritage is in the reserve.

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

*Erection of buildings etc.*

(3) A person commits an offence if:

- (a) the person takes any of the following actions:
  - (i) erecting a building or structure;
  - (ii) carrying on an excavation;
  - (iii) carrying out works; and
- (b) the action is taken in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

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

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

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

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

*Actions taken for commercial purposes*

(5) A person commits an offence if:

- (a) the person takes an action; and



- (b) the person takes the action for a commercial purpose; and
- (c) the action is taken in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

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

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

- (6) Paragraph (5)(b) states the fault element for paragraph (5)(a).
- (7) Strict liability applies to paragraph (5)(c).

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

*Exception for actions in accordance with a management plan*

- (8) Subsections (1), (3) and (5) do not apply to an action if the action is in accordance with a management plan in operation for the Commonwealth reserve in which the action is taken.

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

Note 2: This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

*Exception for mining operations*

- (9) Subsections (1), (3) and (5) do not apply to an action if the action is taken in the course of carrying on mining operations.

Note 1: Mining operations are covered by sections 355, 355A and 387.

Note 2: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

*Exception for certain actions taken by the Director—actions in places other than Kakadu, Uluru or Jervis Bay*

- (10) Subsections (1), (3) and (5) do not apply to an action taken by the Director if:
  - (a) a management plan is not in operation for the Commonwealth reserve in which the action is taken; and
  - (b) the action is not taken in the Kakadu region, the Uluru region or the Jervis Bay Territory; and
  - (c) the Director takes the action for the purpose of:

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- (i) preserving or protecting the reserve; or
- (ii) protecting or conserving biodiversity or heritage in the reserve; or
- (iii) controlling authorised scientific research; or
- (iv) protecting persons or property in the reserve; or
- (v) managing the effects of actions taken under a usage right described in section 359.

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

Note 2: This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

*Exception for certain actions taken by the Director—conduct in Kakadu, Uluru or Jervis Bay*

- (11) Subsections (1), (3) and (5) do not apply to an action taken by the Director in accordance with section 385.

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

*Exception for prior usage rights*

- (12) Subsections (1), (3) and (5) do not apply to an action that is covered by a usage right, or a right arising out of a usage right, to which section 359 applies.

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

Note 2: This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

*Exception for prior traditional use*

- (13) Subsections (1), (3) and (5) do not apply to an action that is covered by section 359A.

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

*Exception for actions approved under section 359B*

- (14) Subsections (1), (3) and (5) do not apply to an action that is covered by an approval in force under subsection 359B(1). For this purpose, an action is covered by such an approval if:

- (a) a management plan is not in operation for the Commonwealth reserve; and
- (b) the action is, or is in the class of actions, specified in the approval; and
- (c) the action is taken in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

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

*Actions in the Antarctic*

- (15) Subsections (1), (3) and (5) do not apply to an action taken in the Antarctic if:

- (a) taking the action is an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980*; and
- (b) the person has a defence under that Act in relation to the offence.

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

- (16) The exceptions in subsections (8), (10) and (12) of this section do not apply in relation to an action taken in the Antarctic if taking the action is an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980*.

Note: Although the exception in subsection (9) can still apply, mining operations in the Antarctic are prohibited in any case under the *Antarctic Treaty (Environment Protection) Act 1980*. The exceptions in subsections (11) and (13) cannot apply to actions taken in the Antarctic.

*Sentencing restriction for offences in the exclusive economic zone*

- (17) A court must not impose a sentence of imprisonment on a person for an offence under subsection (1) or (5) if:

- (a) fishing (as defined in the *Fisheries Management Act 1991*) constituted a physical element of the offence; and
- (b) the fishing was done:
  - (i) in the exclusive economic zone; and
  - (ii) otherwise than from an Australian vessel (or a vessel declared to be an Australian boat under subsection 4(2) of the *Fisheries Management Act 1991*); and

- (c) at the time of the fishing, the person was not an Australian citizen or a person who held a permanent visa under the *Migration Act 1958* and was domiciled in Australia or an external territory.

*Section has effect despite other laws*

- (18) Except as provided in this section, this section has effect despite any other law of the Commonwealth or of a State or Territory.

### **592 Subsection 355(1)**

Repeal the subsection, substitute:

- (1) A person must not carry on mining operations in a Commonwealth reserve except in accordance with a management plan in operation for the reserve.

Civil penalty:

- (a) for an individual—500 penalty units;  
(b) for a body corporate—5,000 penalty units.

- (1A) Subsection (1) does not apply in relation to the Kakadu National Park or the Antarctic.

Note: Section 387 generally prohibits mining operations in the Kakadu National Park. Sections 19A and 19B of the *Antarctic Treaty (Environment Protection) Act 1980* prohibit mining activities in the Antarctic.

### **593 After subsection 355(3)**

Insert:

- (3A) Subsection (1) does not apply to mining operations that are covered by an approval in force under subsection 359B(2). For this purpose, mining operations are covered by such an approval if:
- (a) a management plan is not in operation for the Commonwealth reserve; and
- (b) the mining operations are, or are in the class of mining operations, specified in the approval; and
- (c) the mining operations are carried on in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

**594 Paragraphs 355(5)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) section 359A (about traditional use of an area in a reserve);

**595 After section 355**

Insert:

**355A Offence relating to mining operations**

*Offence of carrying on mining operations*

- (1) A person commits an offence if:
  - (a) the person carries on mining operations; and
  - (b) the mining operations are carried on in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

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

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

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

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

- (3) To avoid doubt, subsection (1) does not prevent the doing of anything for the purposes of building or construction, or the supply of water, in a Commonwealth reserve unless the purposes are connected with, or incidental to, mining operations.

*Exception for mining operations carried on in accordance with a management plan*

- (4) Subsection (1) does not apply to the carrying on of mining operations in accordance with a management plan in operation for the Commonwealth reserve in which the operations are carried on.

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

*Exception in relation to Kakadu National Park and the Antarctic*

- (5) Subsection (1) does not apply to the carrying on of mining operations in the Kakadu National Park or in the Antarctic.

Note 1: Section 387 generally prohibits mining operations in the Kakadu National Park. Sections 19A and 19B of the *Antarctic Treaty (Environment Protection) Act 1980* prohibit mining activities in the Antarctic.

Note 2: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

*Exception for prior usage rights*

- (6) Subsection (1) does not apply to mining operations that are covered by a usage right, or a right arising out of a usage right, to which section 359 applies.

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

*Exception for prior traditional use*

- (7) Subsection (1) does not apply to an action that is covered by section 359A.

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

*Exception for mining operations approved under section 359B*

- (8) Subsection (1) does not apply to mining operations that are covered by an approval in force under subsection 359B(2). For this purpose, mining operations are covered by such an approval if:

- (a) a management plan is not in operation for the Commonwealth reserve; and
- (b) the mining operations are, or are in the class of mining operations, specified in the approval; and
- (c) the mining operations are carried on in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

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

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*Section has effect despite other laws*

- (9) Except as provided in this section, this section has effect despite any other law of the Commonwealth or of a State or Territory.

**596 Paragraph 356(1)(j)**

After “conduct”, insert “, or prohibit certain kinds of conduct,”.

**597 After section 359A**

Insert:

**359B Director’s approval of actions and mining operations when a management plan is not in operation**

*Approval of actions (other than mining operations)*

- (1) The Director may, in writing, approve the taking of a specified action or a specified class of actions, by a specified person or a specified class of persons, in a specified area that is or is part of a Commonwealth reserve, if:
- (a) the Director is satisfied that:
    - (i) no management plan has yet come into operation for the reserve; and
    - (ii) immediately before the area became included in the reserve, the person, or the persons in the class of persons, held a usage right, or a right arising out of a usage right, that entitled the person or persons to take the action, or the actions in the class of actions, in the area; and
    - (iii) the usage right is not a right in relation to land or seabed to which section 359 applies; or
  - (b) the Director is satisfied that:
    - (i) a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation; and
    - (ii) immediately before the management plan ceased to be in operation, the person, or the persons in the class of persons, were taking the action, or the actions in the class of actions, in the area without contravening section 354 or 354A; and

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(iii) the action or class of actions is not mining operations.

Note 1: In exercising the power to give approvals, the Director must comply with section 357.

Note 2: If an action taken without approval would not contravene section 354 or 354A, the action does not need approval under this subsection.

*Approval of mining operations*

- (2) The Director may, in writing, approve the carrying on of specified mining operations, or a specified class of mining operations, by a specified person or a specified class of persons, in a specified area that is or is part of a Commonwealth reserve, if:
- (a) the Director is satisfied that no management plan has yet come into operation for the reserve; or
  - (b) the Director is satisfied that a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation.

Note 1: In exercising the power to give approvals, the Director must comply with section 357.

Note 2: If an action taken without approval would not contravene section 355 or 355A, the action does not need approval under this subsection.

*Limits on approvals in relation to the Kakadu National Park and the Antarctic*

- (3) The Director must not approve:
- (a) an action in the Antarctic that would be an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980* (whether or not a defence would be available under that Act); or
  - (b) mining operations in the Kakadu National Park or the Antarctic.

*Approvals may be subject to conditions*

- (4) An approval given under subsection (1) or (2) may be expressed to be subject to specified conditions.



*When approvals come into force*

- (5) An approval given under subsection (1) or (2) comes into force on the day the Director gives the approval, or on a later day specified in the approval.

*Variation and revocation of approvals*

- (6) The Director may, in writing, vary or revoke an approval:
- (a) under subsection (1)—if the Director considers that the action, or an action in the class of actions, to which the approval relates is not being taken in accordance with the approval; or
  - (b) under subsection (2)—if the Director considers that the mining operations, or mining operations in the class of mining operations, to which the approval relates are not being carried on in accordance with the approval.
- (7) An approval given under subsection (1) or (2), or a variation or revocation of an approval, is not a legislative instrument.

**598 Section 360**

Repeal the section.

**599 Subsection 367(5)**

Repeal the subsection, substitute:

- (5) A single management plan may be the management plan for more than one Commonwealth reserve.

**600 Section 373**

Omit “7 years”, substitute “10 years”.

**601 Subsection 379(1)**

Repeal the subsection (but not the note), substitute:

*Appointment of persons*

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

- (b) the Minister is satisfied that the person is a fit and proper person to be a member of the Board (see section 379A).

**602 After section 379**

Insert:

**379A Fit and proper person**

In determining for the purposes of this Subdivision whether a person is a fit and proper person to be a member of a Board, the Minister may have regard to the matters specified in regulations made for the purposes of this section. The Minister may also have regard to any other matter the Minister considers appropriate.

Note: The question whether a person is a fit and proper person is relevant to subsection 379(1) (which is about appointments to Boards), and subsection 382(1A) (which is about termination of appointments).

**603 After subsection 382(1)**

Insert:

*Termination if person is not fit and proper*

- (1A) The Minister must terminate the appointment of a member of a Board if the Minister is satisfied that the member is not a fit and proper person to be a member of the Board. For this purpose, in having regard to matters as mentioned in section 379A, the Minister may consider things that happened either before or after the member's appointment.

**604 Subsection 387(2)**

Omit "Subsection (1) and subsection 355(1) do not prevent", substitute "Subsection (1) does not prevent".

**605 After Chapter 5**

Insert:

## **Chapter 5A—The List of Overseas Places of Historic Significance to Australia**

### **Part 15A—The List of Overseas Places of Historic Significance to Australia**

#### **390K The List of Overseas Places of Historic Significance to Australia**

- (1) The Minister must keep a written record of places in accordance with this Part. The record is called the *List of Overseas Places of Historic Significance to Australia*.
- (2) The List of Overseas Places of Historic Significance to Australia is not a legislative instrument.

#### **390L Inclusion of places in the List of Overseas Places of Historic Significance to Australia**

- (1) The Minister may, by notice published in the *Gazette*, include a place, and a statement of its historic significance to Australia, in the List of Overseas Places of Historic Significance to Australia if, and only if:
  - (a) the place is outside the Australian jurisdiction; and
  - (b) the Minister is satisfied that the place is of outstanding historic significance to Australia.
- (2) The regulations may specify matters the Minister is to have regard to in considering whether he or she is satisfied as mentioned in paragraph (1)(b).

#### **390M Removal of places from the List of Overseas Places of Historic Significance to Australia or variation of statement of historic significance**

- (1) The Minister may, by notice published in the *Gazette*, do either of the following in relation to a place that is included in the List of Overseas Places of Historic Significance to Australia:

- (a) remove the place, and the statement of its historic significance to Australia, from the List;
  - (b) vary the statement of the place's historic significance to Australia.
- (2) The regulations may specify matters the Minister is to have regard to in considering whether to take action under subsection (1).

**390N Inviting comments from other Ministers before taking action**

- (1) Before taking action in relation to a place under section 390L or 390M, the Minister (the *Environment Minister*) must:
- (a) inform the following other Ministers of the action the Environment Minister proposes to take:
    - (i) the Minister for Foreign Affairs;
    - (ii) any other Minister whom the Environment Minister believes should be informed; and
  - (b) invite those other Ministers to give the Environment Minister comments on the proposed action; and
  - (c) take any comments from those other Ministers into account.
- (2) In this section:

*Minister for Foreign Affairs* means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

**390P Minister may ask Australian Heritage Council for advice etc.**

- (1) The Minister may ask the Australian Heritage Council for advice relating to action that the Minister is considering taking under section 390L or 390M in relation to a place, and may take that advice into account in deciding what action (if any) to take under that section in relation to the place.
- (2) The Minister may also seek, and have regard to, information or advice from any other source.

**390Q List of Overseas Places of Historic Significance to Australia to be publicly available**

The Minister must ensure that:

- (a) up-to-date copies of the List of Overseas Places of Historic Significance to Australia are available for free to the public on request; and
- (b) an up-to-date copy of the List is available on the Internet.

**390R Disclosure of Australian Heritage Council's assessments and advice**

- (1) A member of the Australian Heritage Council has a duty not to disclose advice under section 390P to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council.
- (2) However, the duty not to disclose the advice does not exist after the Minister has decided whether to take the action to which the advice relates.

**606 Subsection 391(3) (after table item 6)**

Insert:

6A	269AA	whether or not to have a recovery plan for a listed threatened species or a listed threatened ecological community
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**607 Section 391A**

Repeal the section.

**608 Section 394**

Repeal the section, substitute:

**394 Wardens *ex officio***

By force of this section each of the following is a warden:

- (a) each member or special member of the Australian Federal Police;
- (b) each officer of Customs.

**609 Subsection 395(1)**

After "police force", insert "or an officer of Customs".

**610 At the end of subsection 397(1)**

Add:

; (c) each officer of Customs.

**611 Paragraph 397(3)(a)**

Repeal the paragraph.

**612 After Subdivision B of Division 1 of Part 17**

Insert:

**Subdivision BA—Exercise of powers of authorised officers  
outside the territorial sea**

**399A Powers to be exercised consistently with UNCLOS**

- (1) This section applies in relation to the powers of an authorised officer under this Part (including powers an authorised officer has under or because of a search warrant or a monitoring warrant), to the extent that the powers are otherwise permitted to be exercised:
  - (a) outside the territorial sea; and
  - (b) in relation to a person, aircraft or vessel, other than a person aircraft or vessel of a kind referred to in any of paragraphs 5(3)(a) to (h).
- (2) The powers of an authorised officer, to the extent to which this section applies to them, must be exercised consistently with Australia's rights and obligations under:
  - (a) UNCLOS; and
  - (b) any other international agreements specified in regulations made for the purposes of this section.

- (3) In this section:

**UNCLOS** means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31. In 2006, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII Internet site ([www.austlii.edu.au](http://www.austlii.edu.au)).

**613 Division 2 of Part 17 (heading)**

Repeal the heading, substitute:

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

### **614 Subsection 403(1)**

Repeal the subsection, substitute:

- (1) This section applies to:
- (a) any Australian vessel or Australian aircraft, whether or not it is in the Australian jurisdiction; or
  - (b) any other vessel or aircraft, or any vehicle or platform, that is in the Australian jurisdiction.

### **615 Subsection 403(2)**

After “platform” (first occurring), insert “to which this section applies”.

### **616 Subsection 403(2)**

Omit “evidential material”, substitute “evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both”.

### **617 After subsection 403(2)**

Insert:

- (2A) An authorised officer who boards a vehicle, vessel, aircraft or platform under paragraph (2)(a) may require a person on the vehicle, vessel, aircraft or platform to:
- (a) answer a question asked by the authorised officer; or
  - (b) give the authorised officer information requested by the authorised officer; or
  - (c) produce to the authorised officer records or documents kept on the vehicle, vessel, aircraft or platform.

### **618 Subsection 403(3)**

Omit “which is in the territorial sea of Australia or an external Territory”, substitute “to which this section applies”.

### **619 Subsection 403(4)**

Repeal the subsection, substitute:

- (4) An authorised officer, or the person in command of a Commonwealth ship or of a Commonwealth aircraft, may require

the person in charge of an aircraft to which this section applies to bring the aircraft to the nearest airport in Australia or an external Territory to which it is safe and practicable to bring the aircraft if:

- (a) the authorised officer, or the person in command of the Commonwealth ship or Commonwealth aircraft, suspects on reasonable grounds that the aircraft has been used or otherwise involved in the commission of an offence against this Act or the regulations; and
- (b) the requirement is made by means of an international signal code or other internationally recognised means of communication with an aircraft.

**620 Subsection 403(5)**

After “platform” (first occurring), insert “to which this section applies”.

**621 After subsection 403(5)**

Insert:

(5A) A person commits an offence if:

- (a) a requirement is made of the person under this section; and
- (b) the person fails to comply with the requirement.

Penalty:

- (a) if the requirement is made under subsection (2A)—  
imprisonment for 6 months or 30 penalty units, or both; or
- (b) if the requirement is made under subsection (3), (4) or (5)—  
50 penalty units.

(5B) If there is a restraint on the liberty of a person on a vessel resulting from an authorised officer’s exercise of a power under this section in relation to the vessel:

- (a) the restraint is not unlawful; and
- (b) civil or criminal proceedings in respect of the restraint may not be instituted or continued in any court against:
  - (i) the authorised officer; or
  - (ii) any person assisting the authorised officer in the exercise of the power; or
  - (iii) the Commonwealth.

This subsection is not intended to affect the jurisdiction of the High Court under section 75 of the Constitution.



**622 Subsection 403(6) (definition of *Australian platform*)**

Repeal the definition.

**623 Subsection 404(1)**

Omit “(other than a member of a police force, or an officer of Customs, who is in uniform)”, substitute “(subject to subsection (1A))”.

**624 Subsection 404(1)**

Omit “to which section 403 applies”, substitute “under section 403”.

**625 After subsection 404(1)**

Insert:

(1A) Subsection (1) does not apply to an authorised officer if:

- (a) the authorised officer is a member of a police force or an officer of Customs; and
- (b) the officer is in uniform.

**626 Subsection 404(3)**

Omit “(other than a member of a police force, or an officer of Customs, who is in uniform)”, substitute “(subject to subsection (3A))”.

**627 After subsection 404(3)**

Insert:

(3A) Subsection (3) does not apply to an authorised officer if:

- (a) the authorised officer is a member of a police force or an officer of Customs; and
- (b) the officer is in uniform.

**628 Subsection 404(4)**

Repeal the subsection.

**629 Subsection 405(1)**

Omit “(except subsection 406(4))”.

**630 Subsection 405(2)**

Omit “(except subsection 406(4))”.

**631 At the end of section 405**

Add:

- (4) An authorised officer is not entitled to:
- (a) enter premises under subsection (1); or
  - (b) exercise any powers as mentioned in subsection (2);
- if the occupier of the premises has required the officer to produce written identification for inspection by the occupier and:
- (c) if the authorised officer is a member of a police force—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is a member of that police force; or
  - (d) if the authorised officer is an officer of Customs—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is an officer of Customs; or
  - (e) in any other case—the officer fails to produce his or her identity card for inspection by the occupier.

**632 Paragraph 406(1)(b)**

Omit “evidential material”, substitute “evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both”.

**633 After paragraph 406(1)(b)**

Insert:

- (ba) in the case of an authorised officer who boards a vessel under section 403—subject to section 406A, search without warrant:
- (i) a person on the vessel; and
  - (ii) the person’s clothing;
- to find out whether there is hidden on the person or in the clothing:
- (iii) an eligible seizable item; or
  - (iv) a thing that may be evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both; and

**634 Paragraph 406(1)(c)**

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Omit “evidential material”, substitute “evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both”.

**635 Paragraph 406(1)(d)**

Omit “this Act”, substitute “section 444A or 445”.

**636 Paragraph 406(1)(e)**

Omit “paragraph (a), (aa), (b), (c), (ca) or (d)”, substitute “any of the other paragraphs of this subsection”.

**637 Subsection 406(2)**

Repeal the subsection, substitute:

(2) For the purposes of this Part, *evidential material* means:

- (a) in relation to an offence against the Act or the regulations:
  - (i) any thing with respect to which the offence has been committed or is suspected, on reasonable grounds, of having been committed; or
  - (ii) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of the offence; or
  - (iii) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing the offence; and
- (b) in relation to a contravention of a civil penalty provision:
  - (i) any thing with respect to which the civil penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or
  - (ii) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the contravention of the civil penalty provision; or
  - (iii) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of contravening the civil penalty provision.

(2A) A reference to a thing in subsection (2) includes a reference to any such thing in electronic form.

**638 Subsections 406(4), (5) and (6)**

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Repeal the subsections.

**639 At the end of Division 2 of Part 17**

Add:

**406A Searches under paragraph 406(1)(ba)**

- (1) A search under paragraph 406(1)(ba) of a person (the *subject*) may only be conducted by an authorised officer of the same sex as the subject.
- (2) However, if an authorised officer of the same sex as the subject is not available to conduct the search, it may be conducted by another person who:
  - (a) is of the same sex as the subject; and
  - (b) agrees, at the request of an authorised officer, to conduct the search.
- (3) Paragraph 406(1)(ba) and this section do not authorise the authorised officer or other person:
  - (a) to remove any of the subject's clothing; or
  - (b) to require the subject to remove any of his or her clothing; or
  - (c) to use more force, or subject the subject to greater indignity, than is reasonably necessary to conduct the search.
- (4) If, in conducting a search, an authorised officer finds an eligible seizable item, or a thing that may be evidential material as mentioned in subparagraph 406(1)(ba)(iv), an authorised officer may:
  - (a) take possession of the item or thing; and
  - (b) keep the item or thing for such time as he or she thinks necessary for the purposes of this Act.
- (5) If, in conducting a search, the other person finds an item or thing mentioned in subsection (4):
  - (a) he or she must take possession of it and give it to an authorised officer; and
  - (b) an authorised officer may keep it for such time as he or she thinks necessary for the purposes of this Act.
- (6) If:

- (a) under subsection (4) or (5) an authorised officer is keeping an item or thing found in a search of the subject; and
  - (b) the subject is detained under Schedule 1;
- the authorised officer may continue to keep the item or thing for such time as he or she thinks necessary for the purposes of this Act or the *Migration Act 1958*.

Note: Once the subject ceases to be detained under Schedule 1, the subject will generally need to be detained under the *Migration Act 1958* while he or she is in the migration zone (because his or her enforcement visa under that Act will cease to have effect). Subsection (6) ensures the officer can keep the item or thing while the subject is detained under this Act or that Act.

#### **406B Thing taken into possession is not a thing seized**

A reference in this Act to a thing (however described) seized under this Part or this Act does not include a reference to a thing that has been taken into possession under section 406A or Schedule 1.

#### **640 Section 407**

Before “For the purposes”, insert “(1)”.

#### **641 After paragraph 407(ca)**

Insert:

- (cb) the power to mark a live specimen on the premises (see subsection (2));

#### **642 After paragraph 407(d)**

Insert:

- (da) the powers to operate electronic equipment, and do other things, at the premises as mentioned in section 407A;

#### **643 Paragraph 407(e)**

Omit “paragraph (a), (b), (c), (ca) or (d)”, substitute “any other paragraph of this subsection”.

#### **644 At the end of section 407**

Add:

- (2) For the purposes of paragraph (1)(cb), *mark* includes:
  - (a) in the case of a live plant:

- (i) mark or label a cage or container in which the plant is kept or in which the plant is growing; and
    - (ii) place a label or tag on the plant; and
  - (b) in the case of a live animal:
    - (i) implant a scannable device in the animal; and
    - (ii) place a band on any part of the animal; and
    - (iii) place (whether by piercing or otherwise) a tag or ring on any part of the animal; and
    - (iv) mark or label a cage or container within which the animal is kept.
- (3) If:
- (a) damage is caused to a specimen, or a cage or container in which a specimen is kept, as a result of an authorised officer exercising the power to mark under paragraph (1)(cb); and
  - (b) the damage was caused as a result of insufficient care being exercised by the authorised officer;
- compensation for the damage is payable to the owner of the specimen, or to the owner of the cage or container, as the case requires.
- (4) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (5) In determining the amount of compensation payable, regard is to be had to whether the owner, if the owner was available at the time, had provided any warning or guidance relating to the marking of the specimen, cage or container.

## **645 After section 407**

Insert:

### **407A Operation of electronic equipment at premises**

*Monitoring powers include the powers set out in this section*

- (1) Monitoring powers in relation to premises include the powers set out in this section. This section does not authorise these powers to be exercised otherwise than in situations in which this Division allows monitoring powers to be exercised.

*Operation of equipment*

- (2) An authorised officer may operate electronic equipment at premises to see whether relevant material is accessible by doing so, if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

*Seizure etc.*

- (3) If an authorised officer operates electronic equipment at premises under subsection (2), and the authorised officer finds that relevant material is accessible by doing so, he or she may:
- (a) seize the equipment and any disk, tape or other associated device; or
  - (b) if the relevant material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
  - (c) if the relevant material can be transferred to a disk, tape or other storage device that:
    - (i) is brought to the premises; or
    - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

*Limitation on seizure*

- (4) An authorised officer may seize equipment under paragraph (3)(a) only if:
- (a) it is not practicable to put the relevant material in documentary form as mentioned in paragraph (3)(b) or to copy the material as mentioned in paragraph (3)(c); or
  - (b) possession of the equipment by the occupier could constitute an offence.

*How this Part applies to things seized*

- (5) The other provisions of this Part apply in relation to a thing seized under paragraph (3)(a) or (b) as if the thing had been seized under section 445.

*Securing equipment*

- (6) If an authorised officer believes on reasonable grounds that:
- (a) relevant material may be accessible by operating electronic equipment at the premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

*Notice about securing equipment*

- (7) An authorised officer who wishes to secure electronic equipment under subsection (6) must give notice to the occupier of the premises of:
- (a) his or her intention to secure the equipment; and
  - (b) the fact that the equipment may be secured for up to 24 hours.

*Period for which equipment may be secured*

- (8) Electronic equipment may be secured under subsection (6):
- (a) for a period not exceeding 24 hours; or
  - (b) until the equipment has been operated by the expert; whichever happens first.

*Extension of period*

- (9) If an authorised officer believes on reasonable grounds that expert assistance will not be available within 24 hours, the authorised officer may apply to a magistrate for an extension of that period.



*Notice to occupier*

- (10) An authorised officer must give notice to the occupier of the premises of his or her intention to apply for an extension under subsection (9), and the occupier is entitled to be heard in relation to the application.

*Provisions relating to extensions*

- (11) The provisions of this Division relating to the issue of a monitoring warrant apply, with such modifications as are necessary, to the issuing of an extension.

*Definition*

- (12) In this section:

***relevant material*** means:

- (a) evidential material; or
- (b) any other material that is relevant for the purposes of finding out whether any or all of the provisions of this Act or the regulations have been, are being or will be complied with.

**407B Compensation for damage to electronic equipment**

- (1) If:
- (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and
  - (b) the damage was caused as a result of:
    - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care being exercised by the person operating the equipment;
- compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had

provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

**646 Subsections 408(1) and (2)**

Omit “are being”, substitute “have been, are being or will be”.

**647 At the end of subsection 409(1)**

Add:

Note: Urgent applications may be made by telephone or other electronic means under section 409A.

**648 Subsection 409(2)**

Omit “are being”, substitute “have been, are being or will be”.

**649 Subsection 409(3)**

Omit “authorised person”, substitute “authorised officer”.

**650 Paragraph 409(4)(a)**

Repeal the paragraph, substitute:

- (a) name an authorised officer who, unless he or she inserts the name of another authorised officer in the warrant, is to be responsible for executing the warrant; and
- (aa) authorise the executing officer, with such assistance and by such force as is necessary and reasonable, from time to time while the monitoring warrant remains in force:
  - (i) to enter the premises; and
  - (ii) to exercise monitoring powers in relation to the premises; and

**651 After section 409**

Insert:

**409A Monitoring warrants by telephone or other electronic means**

*Application*

- (1) An authorised officer may make an application to a magistrate for a monitoring warrant by telephone, telex, fax or other electronic means:
    - (a) in an urgent case; or
-

- (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the monitoring warrant.

*Voice communication*

- (2) The magistrate:
  - (a) may require communication by voice to the extent that is practicable in the circumstances; and
  - (b) may make a recording of the whole or any part of any such communication by voice.

*Information*

- (3) An application under this section must include all information as required to be provided in an application under section 409, but the application may, if necessary, be made before the information is sworn or affirmed.

*Issue of monitoring warrant*

- (4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:
  - (a) a monitoring warrant in the terms of the application should be issued urgently; or
  - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the monitoring warrant;the magistrate may complete and sign the same form of monitoring warrant that would be issued under section 409.

*Notification*

- (5) If the magistrate decides to issue the monitoring warrant, the magistrate must inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the monitoring warrant and the day on which and the time at which it was signed.

*Form of monitoring warrant*

- (6) The applicant must then complete a form of monitoring warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the monitoring warrant was signed.

*Completed form of monitoring warrant to be given to magistrate*

- (7) The applicant must, not later than 48 hours after making the application, give or transmit to the magistrate:
- (a) the form of monitoring warrant completed by the applicant; and
  - (b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.

*Attachment of form of warrant to subsection (7) documents*

- (8) The magistrate must attach to the documents provided under subsection (7) the form of monitoring warrant completed by the magistrate.

*Presumption if form of warrant not produced in evidence*

- (9) If:
- (a) it is material, in any proceeding, for a court to be satisfied that the exercise of a power under a monitoring warrant issued under this section was duly authorised; and
  - (b) the form of monitoring warrant signed by the magistrate is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

*Court may admit evidence even if subsection (7) or (8) not complied with*

- (10) A court may admit evidence obtained because of the issue of a warrant pursuant to this section even if either or both of subsections (7) and (8) have not been complied with if, having regard to the nature of and reasons for the non-compliance and any other relevant matters, the court is satisfied that it was not practicable to comply with that subsection or those subsections (as the case requires).

**409B Executing officer to be in possession of warrant**

When executing a warrant, the executing officer must be in possession of:

- (a) the original warrant issued by the magistrate under section 409, or a copy of the original warrant as so issued; or
- (b) the original form of warrant completed under subsection 409A(6), or a copy of the original form as so completed.

**652 Subsection 410(1)**

Omit “authorised officer named in the monitoring warrant”, substitute “executing officer”.

**653 Subsection 410(2)**

Omit “authorised officer named in the monitoring warrant”, substitute “executing officer”.

**654 Subsection 412(1)**

Omit “The authorised officer named in a monitoring warrant must, before any person enters premises under the monitoring warrant”, substitute “Before any person enters premises under a monitoring warrant, the executing officer must”.

**655 Subsection 412(2)**

Omit “An authorised officer”, substitute “The executing officer”.

**656 Subsection 412A(1)**

Omit “If the authorised officer named in a monitoring warrant enters premises under the warrant”, substitute “If the executing officer enters premises under a monitoring warrant”.

**657 Paragraphs 412A(1)(a), (b) and (c)**

Omit “authorised officer” (wherever occurring), substitute “executing officer”.

**658 Paragraph 412A(2)(a)**

Repeal the paragraph, substitute:

- (a) the executing officer has entered premises under a monitoring warrant; and

**659 Paragraph 412A(2)(c)**

Omit “authorised officer” (wherever occurring), substitute “executing officer”.

**660 Subsection 413(1)**

Omit “by information on oath”, substitute “, by information on oath or affirmation,”.

**661 Subsection 413(1)**

Omit “any evidential material at the premises”, substitute “at the premises evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both”.

**662 Subsection 413(2)**

Omit “by information on oath”, substitute “, by information on oath or affirmation,”.

**663 Subsection 413(2)**

Omit “evidential material”, substitute “evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both”.

**664 Paragraph 414(1)(a)**

Omit “the offence”, substitute “each offence and/or civil penalty provision”.

**665 Paragraph 414(1)(d)**

Repeal the paragraph, substitute:

- (d) the name of the authorised officer who, unless he or she inserts the name of another authorised officer in the warrant, is to be responsible for executing the warrant; and

**666 Paragraph 414(1)(f)**

Repeal the paragraph, substitute:

- (f) if the warrant relates to premises—whether the premises may be entered at any time of the day or night or only during particular hours of the day or night; and

(g) if the warrant relates to a person—whether the search of the person may be carried out at any time of the day or night or only during particular hours of the day or night.

**667 Subparagraph 414(2)(a)(i)**

Omit “in relation to an offence”, substitute “in relation to an offence, or in relation to a contravention of a civil penalty provision,”.

**668 After subparagraph 414(2)(a)(ii)**

Insert:

or (iii) evidential material in relation to another contravention of a civil penalty provision;

**669 Paragraph 414(2)(a)**

After “regulations”, insert “or in contravening a civil penalty provision”.

**670 Paragraph 414(2)(b)**

Omit all the words after “the person has”, substitute:

in his or her possession:

- (i) any evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both; or
- (ii) any eligible seizable items.

**671 Subparagraph 414(4)(a)(i)**

Omit “in relation to an offence”, substitute “in relation to an offence, or in relation to a contravention of a civil penalty provision,”.

**672 After subparagraph 414(4)(a)(ii)**

Insert:

or (iii) evidential material in relation to another contravention of a civil penalty provision;

**673 Paragraph 414(4)(a)**

After “regulations”, insert “or in contravening a civil penalty provision”.

**674 Subsection 416(1)**

Omit “authorised person”, substitute “authorised officer”.

**675 At the end of subsection 416(3)**

Add “or affirmed”.

**676 Paragraph 416(7)(b)**

Omit all the words after “was not”, substitute “sworn or affirmed—that information duly sworn or affirmed.”.

**677 Subparagraph 417(1)(d)(i)**

Omit “in relation to an offence”, substitute “in relation to an offence, or in relation to a contravention of a civil penalty provision,”.

**678 After subparagraph 417(1)(d)(ii)**

Insert:

or (iii) evidential material in relation to another contravention of a civil penalty provision;

**679 Paragraph 417(1)(d)**

After “regulations”, insert “or in contravening a civil penalty provision”.

**680 Paragraph 417(1)(f)**

Omit all the words after “the person has”, substitute:  
in his or her possession:

- (i) any evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both; or
- (ii) any eligible seizable items.

**681 Subparagraph 417(2)(c)(i)**

Omit “in relation to an offence”, substitute “in relation to an offence, or in relation to a contravention of a civil penalty provision,”.

**682 After subparagraph 417(2)(c)(ii)**

Insert:

or (iii) evidential material in relation to another contravention of a civil penalty provision;

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**683 Paragraph 417(2)(c)**

After “regulations”, insert “or in contravening a civil penalty provision”.

**684 Subsection 417(3)**

Repeal the subsection, substitute:

*Hours when premises may be searched*

- (3) If a warrant in relation to premises states that the premises may be entered only during particular hours, the premises must not be entered outside those hours.

*Hours when person may be searched*

- (3A) If a warrant in relation to a person states that the search of the person may be carried out only during particular hours, the search must not be carried out outside those hours.

**685 Subsection 417(4)**

Omit “the warrant”, substitute “a warrant”.

**686 After section 418**

Insert:

**418A Executing officer to be in possession of warrant**

When executing a warrant, the executing officer must be in possession of:

- (a) the original warrant issued by the magistrate under section 415, or a copy of the original warrant as so issued; or
- (b) the original form of warrant completed under subsection 416(6), or a copy of the original form as so completed.

**687 Subsection 422(1)**

After “evidential material”, insert “in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both,”.

**688 Subsection 422(2)**

After “evidential material”, insert “in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both,”.

**689 Paragraph 422(4)(a)**

After “evidential material”, insert “in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both,”.

**690 Division 5 of Part 17**

Repeal the Division.

**691 Subsection 430(2)**

Omit “(other than a member of a police force, or an officer of Customs, who is in uniform)”, substitute “(subject to subsection (2A))”.

**692 After subsection 430(2)**

Insert:

(2A) Subsection (2) does not apply to an authorised officer if:

- (a) the authorised officer is a member of a police force or an officer of Customs; and
- (b) the officer is in uniform.

**693 After paragraph 432(a)**

Insert:

- (aa) evidential material in relation to a contravention of a civil penalty provision; or

**694 After paragraph 433(a)**

Insert:

- (aa) evidential material in relation to a contravention of a civil penalty provision; or

**695 At the end of Division 6 of Part 17**

Add:

**433A Interaction of this Division with Schedule 1**

This Division does not limit, and is not limited by, Schedule 1. In particular, the detention of a person under Schedule 1 is not to be taken to constitute the arrest of the person for the purposes of this Division.

**696 After Division 6 of Part 17**

Insert:

**Division 6A—Provisions relating to detention of suspected foreign offenders**

**433B Provisions relating to detention of suspected foreign offenders**

Schedule 1 has effect.

**697 Paragraph 437(a)**

Omit “section 416”, substitute “section 409A or 416”.

**698 Paragraph 437(b)**

Omit “that section”, substitute “section 409A or 416”.

**699 Paragraph 437(c)**

Omit “that section” (first occurring), substitute “section 409A or 416”.

**700 Paragraph 437(d)**

Omit “that section”, substitute “section 409A or 416”.

**701 Section 438**

Repeal the section, substitute:

**438 Retention of things seized under Division 4 or 6**

- (1) This section applies to a thing that is seized under Division 4 or 6.
- (2) The thing may be retained until:
  - (a) the reason for the seizure of the thing no longer exists; or
  - (b) it is decided that the thing is not to be used in evidence;whichever happens first.

- (3) As soon as practicable after the end of the period during which the thing may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (4) Subsection (3) does not apply if:
- (a) the thing is forfeited or forfeitable to the Commonwealth; or
  - (b) the thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or
  - (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

**702 Section 439**

Repeal the section.

**703 Paragraph 442(3)(b)**

Omit “section 429”, substitute “section 403”.

**704 Subsection 442(5)**

Omit “(other than a member of a police force, or an officer of Customs, who is in uniform)”, substitute “(subject to subsection (6))”.

**705 At the end of section 442**

Add:

- (6) Subsection (5) does not apply to an authorised officer if:
- (a) the authorised officer is a member of a police force or an officer of Customs; and
  - (b) the officer is in uniform.

**706 After subsection 443A(2)**

Insert:

- (2A) The authorised officer may ask the questions:

- (a) in any case—by asking them in the presence of the person; or
- (b) if the authorised officer is not a member of a police force and is not an officer of Customs—by sending written questions to the person.

**707 Paragraph 443A(7)(c)**

Repeal the paragraph, substitute:

- (c) if the authorised officer is not a member of a police force and is not an officer of Customs:
  - (i) if the questions are asked in the presence of the person—the authorised officer produces the authorised officer’s identity card for inspection by the person; or
  - (ii) if the questions are asked by sending written questions to the person—the authorised officer sends with the questions a copy of his or her instrument of appointment.

**708 Section 444A**

Before “An”, insert “(1)”.

**709 At the end of section 444A**

Add:

- (2) If a warrant has been issued under Division 4:
  - (a) if the warrant relates to premises—this section does not apply:
    - (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or
    - (ii) to anything found during the course of such a search; and
  - (b) if the warrant relates to a person—this section does not apply:
    - (i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or vessel, under the warrant; or
    - (ii) to anything found during the course of such a search.

Note: Division 4 is about search warrants. The Division contains its own seizure powers (see paragraphs 417(1)(c), (d) and (e) and (2)(b), (c) and (d)).

**710 Section 444F**

Repeal the section.

**711 Paragraph 444G(1)(e)**

Repeal the paragraph.

**712 Subsection 444G(2) (second sentence)**

Repeal the sentence.

**713 At the end of section 444G**

Add:

- (3) As soon as practicable after the end of the period during which the specimen may be retained under subsection (1), the Secretary must cause reasonable steps to be taken to return the specimen to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (4) Subsection (3) does not apply if:
  - (a) the specimen is forfeited or forfeitable to the Commonwealth; or
  - (b) the specimen has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the specimen; or
  - (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the specimen; or
  - (d) proceedings under subsection 444D(1) relating to the specimen are pending.

**714 Subparagraph 444H(1)(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) the specimen is released unconditionally to a person under section 449BA;
- (ia) the specimen is delivered to a person under section 444C;

**715 Subparagraph 444H(1)(b)(iv)**

Omit “section 444K”, substitute “section 450A”.

**716 Section 444J**

Repeal the section.

**717 Section 444K**

Repeal the section.

**718 Subdivision A of Division 10 of Part 17 (heading)**

Repeal the heading, substitute:

**Subdivision A—Seizure of things (other than specimens involved in a contravention of Part 13A)**

**719 Section 445**

Repeal the section, substitute:

**445 Seizure of things (other than specimens involved in a contravention of Part 13A)**

- (1) Subject to subsections (2) and (3), an authorised officer may seize a thing if he or she has reasonable grounds to suspect that it is evidential material in relation to an offence against this Act or the regulations, in relation to contravention of a civil penalty provision or in relation to both.
- (2) This section does not apply to a specimen that an authorised officer has reasonable grounds to suspect has been used or otherwise involved in the commission of an offence against Part 13A.  
Note: Section 444A deals with the seizure of such specimens.
- (3) If a warrant has been issued under Division 4:
  - (a) if the warrant relates to premises—this section does not apply:
    - (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or
    - (ii) to anything found during the course of such a search; and

- (b) if the warrant relates to a person—this section does not apply:
  - (i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or vessel, under the warrant; or
  - (ii) to anything found during the course of such a search.

Note: Division 4 is about search warrants. The Division contains its own seizure powers (see paragraphs 417(1)(c), (d) and (e) and (2)(b), (c) and (d)).

- (4) In this section:

*thing* includes a vehicle, vessel, aircraft, platform, document, organism and specimen.

## 720 Subsections 446(1), (2) and (3)

Repeal the subsections, substitute:

- (1) This section applies to a thing that is seized under section 445.

- (1A) The thing may be retained until:

- (a) the reason for the seizure no longer exists; or
- (b) it is decided that the thing is not to be used in evidence; or
- (c) the end of the period of 60 days after the seizure, or, if that period has been extended under subsection (3), the end of the extended period;

whichever happens first.

- (1B) As soon as practicable after the end of the period (the *retention period*) during which the thing may be retained under subsection (1A), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

- (1C) Subsection (1B) does not apply if:

- (a) the thing is forfeited or forfeitable to the Commonwealth; or
- (b) a proceeding in respect of which the thing may afford evidence was commenced before the end of the retention period and has not been completed (including an appeal to a court in relation to that proceeding); or
- (c) the thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the



Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or

- (d) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.
- (2) An authorised officer may, before the end of the retention period, apply to a magistrate for an order permitting the retention of the thing for a further period.
- (3) If, in relation to an application under subsection (2), the magistrate is satisfied, by information on oath or affirmation, that it is necessary for the thing to continue to be retained:
- (a) for the purposes of an investigation as to whether an offence against this Act or the regulations has been committed, or whether a civil penalty provision has been contravened; or
  - (b) to enable evidence of an offence against this Act or the regulations, or of a contravention of a civil penalty provision, to be secured for the purposes of a proceeding against the person for such an offence or contravention;
- the magistrate may order that the thing may continue to be retained for a period specified in the order. The maximum period of an individual extension must not be more than 30 days.
- (3A) Before an authorised officer makes an application under subsection (2), he or she must:
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, give notice in writing of the proposed application to each person whom the authorised officer believes to have an interest in the proposed application.

Note: The heading to section 446 is replaced by the heading “**Retention of things seized under this Subdivision**”.

### **721 Subsection 446(4)**

Omit “particular goods”, substitute “the thing”.

### **722 Section 447**

Repeal the section.

**723 Section 448**

Repeal the section.

**724 Subdivision B of Division 10 of Part 17 (heading)**

Repeal the heading, substitute:

**Subdivision B—Disposal of seized items**

**725 Paragraph 449(1)(a)**

Omit “this Division”, substitute “this Part”.

**726 Paragraph 449(1)(b)**

Omit “it is”, substitute “the Secretary considers that it is”.

**727 Subparagraph 449(1)(b)(v)**

After “organism” (wherever occurring), insert “or specimen”.

**728 At the end of paragraph 449(1)(b)**

Add:

or (vi) in the case of a live animal—result in the animal suffering;

**729 After subsection 449(1)**

Insert:

(1A) If the Secretary causes a live animal to be destroyed under subsection (1), the Secretary must require the destruction to be carried out in a humane manner.

**730 Paragraph 449(2)(d)**

Omit “this Division”, substitute “this Part”.

**731 At the end of Subdivision B of Division 10 of Part 17**

Add:

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**449A Disposal of seized items if Secretary cannot locate or identify person entitled etc.**

- (1) This section applies to a thing that is seized under this Part if:
  - (a) apart from this section, the thing is required to be returned or delivered to a person (or reasonable steps are required to be taken for the return or delivery to a person of the thing); and
  - (b) one or more of the following applies:
    - (i) the Secretary is satisfied that reasonable steps have been taken to locate or identify the person, but those steps have not succeeded;
    - (ii) the Secretary is satisfied that reasonable steps have been taken to return or deliver the thing to the person, but those steps have not succeeded;
    - (iii) the Secretary is otherwise satisfied that it is not practicable to return or deliver the thing to the person.
- (2) The Secretary may dispose of the thing in such manner as the Secretary considers appropriate.

**732 After Subdivision B of Division 10 of Part 17**

Insert:

**Subdivision BA—Release of seized items to owner etc.**

**449BA Release of seized items to owner etc.**

If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either:

- (a) unconditionally; or
- (b) on such conditions as the Secretary thinks fit (including conditions about the giving of security for giving payment of its value if it is forfeited).

**449BB How this Part applies in relation to things released conditionally**

- (1) This section applies if a thing, or anything in, on or attached to a thing, seized under this Part is released on conditions to a person

under section 449BA. The provision of this Part under which the seizure was made is the *seizure provision*, and the thing that is released is the *released thing*.

- (2) Subject to this section, the provisions of this Part that apply in relation to things seized under the seizure provision continue to apply to the released thing as if it had not been released.
- (3) A reference in a provision of this Part to the return or delivery of the released thing to a person is, if the person is the person to whom the thing has been released, taken to be a reference to making the release of the thing to the person unconditional.
- (4) The regulations may specify modifications of provisions of this Part that are to have effect in relation to things to which this section applies. However, regulations must not:
  - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.
- (5) In this section:

*modifications* includes additions, omissions or substitutions.

### **733 Subdivision C of Division 10 of Part 17 (heading)**

Repeal the heading, substitute:

### **Subdivision C—Forfeiture of seized items**

#### **734 Subsection 450(2)**

After “seized under this Act”, insert “or taken into possession under section 406A or Schedule 1”.

#### **735 At the end of section 450**

Add:

- (3) If:
  - (a) a specimen is seized under this Part; and
  - (b) either:
    - (i) a court finds a person not guilty of an offence against this Act or the regulations in relation to the specimen; or

- (ii) a proceeding in a court for such an offence in relation to the specimen is discontinued or dismissed; and
  - (c) the court is satisfied that there are reasonable grounds for suspecting that, if the specimen were released to the person from whom it was seized or to its owner, the possession of the specimen by that person would contravene a provision of this Act or the regulations;
- the court may order the forfeiture to the Commonwealth of the specimen.

Note: The heading to section 450 is replaced by the heading “**Court-ordered forfeiture: order by court dealing with offence proceedings**”.

### **736 At the end of Subdivision C of Division 10 of Part 17**

Add:

#### **450A Court-ordered forfeiture: other situations**

- (1) A court may, on the application of the Secretary, order the forfeiture to the Commonwealth of a thing that is seized under this Part if the court is satisfied that the thing has been used or otherwise involved in the commission of an offence against this Act or the regulations.
- (2) Without limiting subsection (1), a court may, on the application of the Secretary, order the forfeiture to the Commonwealth of a specimen if:
  - (a) the specimen was seized under this Part; and
  - (b) either:
    - (i) a court has found a person not guilty of an offence against this Act or the regulations in relation to the specimen; or
    - (ii) a proceeding in a court for such an offence in relation to the specimen has been discontinued or dismissed; and
  - (c) the court to which the Secretary applies is satisfied that there are reasonable grounds for suspecting that, if the specimen were released to the person from whom it was seized or to its owner, the possession of the specimen by that person would contravene a provision of this Act or the regulations.

**450B Forfeiture of seized items by consent etc.**

- (1) If:
- (a) a thing is seized under this Part; and
  - (b) the owner of the thing agrees to transfer ownership of the thing to the Commonwealth, either:
    - (i) unconditionally; or
    - (ii) in the event that a future contingency happens; and
  - (c) if subparagraph (b)(ii) applies—that contingency happens;
- then:
- (d) the thing becomes the property of the Commonwealth; and
  - (e) the provisions of this Part relating to forfeiture apply as if the thing had been forfeited to the Commonwealth under this Act.
- (2) If:
- (a) a thing is seized under this Part; and
  - (b) the owner of the thing agrees to transfer ownership of the thing to the Commonwealth in the event that a future contingency happens;
- the Secretary may retain the thing:
- (c) until the thing becomes the property of the Commonwealth; or
  - (d) if the thing does not become the property of the Commonwealth—until the end of the last day on which that contingency could happen.
- (3) Subsection (2) has effect despite anything in section 438, 444G, 446, 456AB or 456AC.

**737 Subdivision D of Division 10 of Part 17 (heading)**

Repeal the heading.

**738 Subdivision E of Division 10 of Part 17 (heading)**

Repeal the heading.

**739 After paragraph 452(1)(c)**

Insert:

- and (d) the Secretary requests the person to deliver the thing to the Secretary;

**740 Subdivision F of Division 10 of Part 17 (heading)**

Repeal the heading, substitute:

**Subdivision F—Keeping of organisms or specimens that have been seized**

**741 Section 453**

After “organism” (wherever occurring), insert “or specimen”.

Note: The heading to section 453 is altered by inserting “or specimens” after “organisms”.

**742 Section 453**

After “organisms”, insert “or specimens”.

**743 Subsection 454(1)**

After “If an organism”, insert “or specimen”.

Note: The heading to section 454 is altered by adding at the end “or specimens”.

**744 At the end of paragraphs 454(1)(a), (b) and (c)**

Add “or specimen”.

**745 Paragraphs 454(2)(a) and (b)**

After “organism”, insert “or specimen”.

**746 At the end of subsection 454(2)**

Add “or specimen”.

**747 Subsection 454(6)**

After “organism”, insert “or specimen”.

**748 Subdivision G of Division 10 of Part 17 (heading)**

Repeal the heading, substitute:

**Subdivision G—Rescuing things**

**749 Paragraph 455(a)**

Omit “goods”, substitute “thing”.

Note: The heading to section 455 is altered by omitting “goods” and substituting “things”.

**750 Paragraph 455(b)**

Omit “goods have been, or are”, substitute “thing has been, or is”.

**751 Subsection 456(1)**

Omit “(1)”.

**752 Paragraph 456(1)(a)**

Omit “any goods”, substitute “any thing”.

Note: The heading to section 456 is altered by omitting “goods” and substituting “things”.

**753 Paragraph 456(1)(a)**

Omit “goods, the securing of goods”, substitute “a thing, the securing of a thing”.

**754 Paragraph 456(1)(b)**

Omit “any goods”, substitute “any thing”.

**755 Paragraph 456(1)(b)**

Omit “goods, the securing of goods”, substitute “a thing, the securing of a thing”.

**756 Subsection 456(2)**

Repeal the subsection.

**757 At the end of Division 10 of Part 17**

Add:

**Subdivision H—Seizure of cages or containers**

**456AA Power to seize cages or containers containing seizable things**

- (1) This section applies if:
- (a) an authorised officer has power to seize a thing (a *seizable thing*) under another provision of this Part; and
  - (b) the seizable thing is in a cage or container; and
  - (c) the authorised officer considers that it is not reasonably practicable to seize the seizable thing without also seizing the cage or container.



(2) For the purpose of seizing the seizable thing and despite any other provision of this Part, the authorised officer may seize the cage or container containing the seizable thing (whether or not the cage or container also contains any other thing).

(3) The seizure of the seizable thing is taken to occur under the provision mentioned in paragraph (1)(a) (not under this section).

Note: The provisions governing the retention and return of the seizable thing are therefore the provisions that usually govern the seizure of a thing under the provision mentioned in paragraph (1)(a).

(4) If:

- (a) an authorised officer seizes a cage or container; and
- (b) the seizure of the cage or container is authorised by this section, and is also authorised by another provision of this Part;

then the seizure is taken to be under this section, rather than under that other provision (subject to subsection 456AB(5)).

#### **456AB Retention of seized cage or container**

(1) This section applies to a cage or container that is seized under section 456AA because it contains a seizable thing.

(2) The cage or container may be retained for so long as an authorised officer considers that it is reasonably necessary to retain it for the purpose of housing the seizable thing.

(3) As soon as practicable after the end of the period during which the cage or container may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the cage or container to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

(4) Subsection (3) does not apply if:

- (a) the seizure was also authorised by another provision of this Part (the *other seizure provision*), as mentioned in subsection 456AA(4)); or
- (b) the cage or container is forfeited or forfeitable to the Commonwealth; or
- (c) the cage or container has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that

means the Secretary is not in a position to cause reasonable steps to be taken to return the cage or container; or

- (d) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the cage or container.
- (5) If, because of paragraph (4)(a), the cage or container does not have to be returned at the end of the period referred to in subsection (3), this Part then applies in relation to the cage or container as if, at the end of that period, it had been seized under the other seizure provision.

#### **456AC Retention of non-seizable things contained in seized cages or containers**

- (1) This section applies if:
  - (a) a cage or container is seized under section 456AA because it contains a seizable thing; and
  - (b) the cage or container also contains a thing (a *non-seizable thing*) that is not a seizable thing.
- (2) The non-seizable thing may be retained until it is reasonably practicable to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (3) As soon as practicable after the end of the period during which the non-seizable thing may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (4) Subsection (3) does not apply if:
  - (a) the non-seizable thing is forfeited or forfeitable to the Commonwealth; or
  - (b) the non-seizable thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or
  - (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the

Commonwealth or of a State or Territory) to retain, destroy,  
dispose of or otherwise deal with the non-seizable thing.

**758 Subsection 472(2)**

Omit “If the notice of advice is given to a person who is not a Commonwealth agency, it”, substitute “If the decision to give the advice was not made personally by the Minister and the notice of advice is given to a person who is not a Commonwealth agency, the notice”.

**759 Paragraph 472(2)(a)**

Omit “Minister’s”.

**760 Subsection 473(1)**

Omit “Applications”, substitute “Subject to subsections (1A) and (2), applications”.

**761 Subsection 473(1)**

Omit “Minister’s”.

**762 After subsection 473(1)**

Insert:

(1A) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

**763 Section 478**

Repeal the section.

**764 After Division 14 of Part 17**

Insert:

**Division 14A—Federal Court’s power to make remediation orders**

**480A Remediation orders**

(1) If, after the commencement of this section, a person has engaged, or is engaging, in conduct constituting an offence or other contravention of this Act or the regulations, the Federal Court may

make an order (a *remediation order*) requiring the person to take action (the *remediation action*) to repair or mitigate damage that may or will be, or that has been, caused to the environment by the contravention.

- (2) In considering whether to grant a remediation order, the matters to which the Federal Court may have regard include (but are not limited to) the following:
  - (a) the nature and extent of the contravention;
  - (b) the nature and extent of the damage to the environment that may or will be, or that has been, caused by the contravention;
  - (c) the circumstances in which the contravention took place;
  - (d) whether the person has previously been found by a court in proceedings under this Act or the regulations to have engaged in any similar conduct;
  - (e) the cost to the person of taking the remediation action.
- (3) The description in a remediation order of the remediation action may either be in general terms (for example, requiring the person to take whatever action is necessary to repair or mitigate the damage), or it may require the person to take particular action to repair or mitigate the damage.
- (4) If the Federal Court makes a remediation order, it may also make an order requiring the person to provide security for the due taking of the remediation action.
- (5) Application to the Federal Court for a remediation order may only be made by the Minister.

#### **480B Discharge of remediation orders**

On application by the Minister, the Federal Court may discharge or vary a remediation order.

#### **480C Powers conferred are in addition to other powers of the Court**

The powers conferred on the Federal Court by this Division are in addition to (and do not limit) any other powers of the Court.

## **Division 14B—Minister’s power to make remediation determinations**

### **Subdivision A—Making of remediation determinations**

#### **480D Minister may make remediation determination**

- (1) If:
  - (a) the Minister considers that an action taken by a person after the commencement of this section contravened a civil penalty provision of Part 3; and
  - (b) the Minister considers it desirable to make an order under this section in relation to the action;the Minister may make a written determination (a **remediation determination**) requiring the person to take action to repair or mitigate damage that may or will be, or that has been, caused by the contravention, to the matter protected by the provision of Part 3.
- (2) The Minister cannot make a remediation determination at a time that is more than 6 years after the time when the person took the action referred to in paragraph (1)(a).
- (3) A remediation determination is not a legislative instrument.

#### **480E Contents of a remediation determination**

- (1) A remediation determination must specify the following:
  - (a) the person (the **specified person**) referred to in paragraph 480D(1)(a);
  - (b) the action (the **specified action**) referred to in that paragraph;
  - (c) the civil penalty provision (the **specified civil penalty provision**) of Part 3 referred to in that paragraph;
  - (d) the action (the **remediation action**) that the person is required to take.
- (2) A remediation determination may do all or any of the following in relation to some or all of the remediation action:
  - (a) require action to be taken in a specified place;
  - (b) require action to be taken at, or by, a specified time;

- (c) require a specified industry standard or code of practice to be complied with in taking action;
  - (d) require the taking of reasonable steps to obtain any Commonwealth, State or Territory approval or authority needed to carry out action;
  - (e) require the preparation, and submission to the Minister for approval, of a plan for taking action, and require action to be taken in accordance with the plan as approved by the Minister;
  - (f) require the spending of a specified amount of money on the taking of action;
  - (g) require the payment to a specified person of a specified amount or money, for the purpose of activities directed towards the protection and conservation of the matter protected by the specified civil penalty provision;
  - (h) require the payment to the Commonwealth of a specified amount of money as security for the due taking of action;
  - (i) provide for monitoring, auditing, or reporting to the Minister, in relation to the taking of action.
- (3) A remediation determination must contain a statement to the effect that the specified person may apply for a reconsideration of the determination under section 480J.

**480F Notifying owners and occupiers of land of proposed remediation determination**

- (1) Before the Minister makes a remediation determination that requires action to be taken on land that is not owned or occupied by the person proposed to be specified in the order, the Minister must:
- (a) take all practicable steps to identify each person who is an owner or occupier of all or part of the land; and
  - (b) take all practicable steps to advise each person identified of the remediation determination that the Minister proposes to make; and
  - (c) give persons advised at least 20 business days to comment in writing to the Minister on the proposed remediation determination.

- (2) The Minister must take the comments into account in deciding whether to make the proposed remediation determination.

#### **480G Notifying that remediation determination has been made**

As soon as practicable after a remediation determination is made, the Minister must:

- (a) give the specified person a copy of the determination; and
- (b) take all practicable steps to advise each person identified as mentioned in paragraph 480F(1)(a) of the making of the remediation determination.

#### **480H Duration of remediation determinations**

- (1) A remediation determination comes into force:
  - (a) if a commencement day is specified in the determination (not being a day before paragraph 480G(a) is complied with)—on that day; or
  - (b) otherwise—when paragraph 480G(a) is complied with.
- (2) The determination remains in force:
  - (a) for the period (if any) specified in the order; or
  - (b) until it is set aside by the Federal Court under Subdivision B or it is revoked by the Minister under Subdivision D.

#### **480J Ministerial reconsideration of remediation determinations**

- (1) Within 20 days after receiving a copy of a remediation determination as required by paragraph 480G(a), the specified person may apply to the Minister for a reconsideration of the determination.
- (2) On receipt of an application for reconsideration of a remediation determination, the Minister may affirm, vary or set aside the determination.
- (3) The Minister may take account of information and comments from any source the Minister considers appropriate in deciding what action to take in relation to an application under this section.
- (4) The Minister must:

- (a) advise the specified person of the Minister's decision in relation to an application under this section; and
- (b) take all practicable steps to advise each person identified as mentioned in paragraph 480F(1)(a) of the Minister's decision in relation to an application under this section.

### **Subdivision B—Federal Court may set aside remediation determination**

#### **480K Applying to Federal Court to have remediation determination set aside**

- (1) Within 28 days after any of the following:
  - (a) the specified person receives a copy of a remediation determination as required by paragraph 480G(a); or
  - (b) a remediation determination is affirmed or varied under section 480J; or
  - (c) a remediation determination is varied by the Minister under Subdivision D;the specified person may apply to the Federal Court to have the remediation determination set aside.
- (2) On an application under subsection (1), the Federal Court must set aside the remediation determination if the Court is satisfied that:
  - (a) the specified action did not occur; or
  - (b) the specified person did not take the specified action; or
  - (c) the specified action was not a contravention of the specified civil penalty provision; or
  - (d) the remediation action is not a reasonable measure to repair or mitigate damage that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision.
- (3) In considering whether the remediation determination is a reasonable measure to repair or mitigate damage that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision, the Federal Court must have regard to the following:
  - (a) the nature and extent of the specified action;



- (b) the nature and extent of the damage to the environment that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision;
- (c) the circumstances in which the specified action took place;
- (d) whether the specified person has previously been found by a court in proceedings under this Act or the regulations to have engaged in any similar conduct;
- (e) the cost to the specified person of taking the remediation action.

The Federal Court may also have regard to any other matters it considers relevant.

- (4) The Federal Court must not set aside the remediation determination unless it is satisfied as mentioned in subsection (2).

### **Subdivision C—Complying with remediation determinations**

#### **480L Federal Court may order compliance with remediation determination**

- (1) If the Minister considers that the specified person has contravened a remediation determination, the Minister may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the specified person has contravened a remediation determination, the Court may make one or more of the following orders:
  - (a) an order directing the specified person to comply with the remediation determination;
  - (b) any other order that the Court considers appropriate.

#### **480M Civil penalty for contravention of remediation determination**

- (1) The specified person must not contravene a remediation determination.
- (2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order the specified person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person to pay under that section for a contravention of the specified civil penalty provision.

**Subdivision D—Variation or revocation of remediation  
determinations**

**480N Variation or revocation of remediation determination**

- (1) The Minister may, in writing, vary or revoke a remediation determination.
- (2) Sections 480F and 480G apply in relation to the variation or revocation of a remediation determination in the same way as they apply in relation to the making of a remediation determination.

**765 Section 486**

Repeal the section.

**766 At the end of Division 15 of Part 17**

Add:

**Subdivision C—Enforceable undertakings relating to  
contraventions of Part 3 civil penalty provisions**

**486DA Acceptance of undertakings relating to contraventions of  
Part 3 civil penalty provisions**

- (1) This section applies if the Minister considers that an action taken by a person after the commencement of this section contravened a civil penalty provision of Part 3.
- (2) The Minister may accept a written undertaking given by the person in relation to the action, in which the person undertakes to pay a specified amount, within a specified period:
  - (a) to the Commonwealth; or
  - (b) to some other specified person, for the purpose of activities directed towards the protection and conservation of the matter protected by the civil penalty provision referred to in subsection (1).
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Minister.

### **486DB Enforcement of undertakings**

- (1) If the Minister considers that a person who gave an undertaking under section 486DA has breached any of its terms, the Minister may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Court may make one or more of the following orders:
  - (a) an order directing the person to comply with that term of the undertaking;
  - (b) any other order that the Court considers appropriate.

### **767 After Division 15 of Part 17**

Insert:

## **Division 15A—Notices to produce or attend**

### **486E Application of Division**

- (1) This Division applies if the Minister believes, on reasonable grounds, that a person is capable of giving information, or producing books, records or documents, that are relevant for the purposes of investigating or preventing:
  - (a) an offence against this Act or the regulations; or
  - (b) a contravention of a civil penalty provision.
- (2) In this Division:

*official* means the Minister, an officer or employee in the Department, or the Director.

### **486F Minister may require person to provide information etc.**

- (1) The Minister may, by written notice, require the person to give to an official specified in the notice, in the manner and within the period specified in the notice:
  - (a) such information as is specified in the notice; or
  - (b) any book, record or document that is specified in the notice.The period must end not less than 14 days after the notice is given.

- (2) A notice under subsection (1) must set out the effect of section 491 of this Act and of sections 137.1 and 137.2 of the *Criminal Code*.
- (3) A person commits an offence if:
- (a) the person is required to give information or a book, record or document to an official under subsection (1); and
  - (b) the person does not give the information, book, record or document to the official.

Penalty: Imprisonment for 6 months.

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

#### **486G Minister may require person to appear before Minister**

- (1) The Minister may, by written notice, require the person to appear before an official specified in the notice, at a time and place specified in the notice:
- (a) to answer any questions put by the official; and
  - (b) to produce to the official such books, records or documents as are specified in the notice.

The time must not be earlier than 14 days after the notice is given.

- (2) A notice under subsection (1) must set out the effect of section 491 of this Act and of sections 137.1 and 137.2 of the *Criminal Code*.
- (3) A person commits an offence if:
- (a) the person is required to appear before an official under subsection (1); and
  - (b) the person does not appear before the official

Penalty: Imprisonment for 6 months.

- (4) A person commits an offence if:
- (a) the person is required to appear before an official under subsection (1); and
  - (b) when appearing before the official, the person does not:
    - (i) answer a question put by the official; or
    - (ii) produce a book, record or document to the official as required by the notice given under that subsection.

Penalty: Imprisonment for 6 months.

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

#### **486H Persons to whom notices may not be given**

A notice under subsection 486F(1) or 486G(1) must not be given to a person if the person is, or has been, a lawyer for:

- (a) if the notice relates to the investigation or prevention of an offence against this Act or the regulations—the person suspected of having committed the offence; or
- (b) if the notice relates to the investigation or prevention of a contravention of a civil penalty provision—the person suspected of having contravened the provision.

#### **486J Self-incrimination**

- (1) An individual is not excused from giving information (including by answering a question), or from giving or producing a book, record or document, under this Division on the ground that the information, or the giving or production of the book, record or document, might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
  - (a) the information given, or the book, record or document given or produced; or
  - (b) giving the information, or giving or producing the book record or document; or
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, or giving or producing the book, record or document;is not admissible in evidence against the person:
  - (d) in any civil proceedings; or
  - (e) in any criminal proceedings other than:
    - (i) proceedings for an offence against subsection 486F(3) or 486G(3) or (4); or
    - (ii) proceedings for an offence against section 491 that relates to a requirement under this Division; or
    - (iii) proceedings for an offence against section 137.1 or 137.2 (false or misleading information or documents) of

the *Criminal Code* that relates to a requirement under this Division.

**768 After subparagraph 495(2)(a)(vii)**

Insert:

(viiia) section 27C (Offences relating to Commonwealth heritage places overseas); or

**769 After Division 18 of Part 17**

Insert:

**Division 18A—Liability of landholders for other people’s actions**

**496A Who is a *landholder*?**

For the purposes of this Division, a *landholder*, in relation to an area of land, is a person who is an owner, lessee or occupier of the area of land.

**496B Civil penalties for landholders**

(1) If:

- (a) a person (the *actor*) takes an action on an area of land that is a contravention of:
  - (i) a provision of Part 3 that is a civil penalty provision; or
  - (ii) section 142; and
- (b) a landholder in relation to the area of land knew that, or was reckless or negligent as to whether, the contravention would occur; and
- (c) the landholder was in a position to influence the conduct of the actor in relation to the contravention; and
- (d) the landholder failed to take all reasonable steps to prevent the contravention;

the landholder contravenes this subsection.

(2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order a landholder contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the

Court could order the landholder to pay, if the landholder had contravened the civil penalty provision contravened by the actor.

#### **496C Criminal liability of landholders**

- (1) If:
- (a) a person (the *actor*) takes an action on an area of land that contravenes:
    - (i) section 15A (Offences relating to declared World Heritage properties); or
    - (ii) section 15C (Offences relating to National Heritage places); or
    - (iii) section 17B (Offences relating to declared Ramsar wetlands); or
    - (iv) section 18A (Offences relating to threatened species etc.); or
    - (v) section 20A (Offences relating to listed migratory species); or
    - (vi) section 22A (Offences relating to nuclear actions); or
    - (vii) section 24A (Offences relating to marine areas); or
    - (viii) section 27A (Offences relating to Commonwealth land); or
    - (ix) section 142A (Offence of breaching conditions on approval); and
  - (b) a landholder in relation to the area of land was reckless as to whether the contravention would occur; and
  - (c) the landholder was in a position to influence the conduct of the actor in relation to the contravention at the time when the contravention occurred; and
  - (d) the landholder failed to take all reasonable steps to prevent the contravention;
- the landholder commits an offence.

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

- (2) An offence against subsection (1) is punishable on conviction by imprisonment for the term specified in the provision contravened by the actor, a fine of the amount specified in that provision, or both.

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

**496D Did a landholder take reasonable steps to prevent a contravention?**

- (1) For the purposes of sections 496B and 496C, in determining whether a landholder failed to take all reasonable steps to prevent the contravention, a court is to have regard to:
  - (a) what action (if any) the landholder took directed towards ensuring that the actor had an appropriate system established for managing the effects of the actor's activities on the environment; and
  - (b) what action (if any) the landholder took upon becoming aware that there was a substantial risk that the actor was contravening provisions of this Act referred to in subsection 496B(1) or 496C(1), as the case requires.
- (2) This section does not, by implication, limit the generality of sections 496B and 496C.

**770 Subsection 497(1)**

After "against", insert "section 142B or".

**771 Subsection 497(2)**

Omit "equal", substitute "not exceed".

**772 Subsection 498A(1)**

After "by this Part", insert ", Schedule 1 (in the case of an authorised officer)".

**773 Subsection 498A(2)**

After "by this Part,", insert "by Schedule 1 (in the case of an authorised officer),".

**774 At the end of Part 17**

Add:



## **Division 22—Conduct of directors, employees and agents**

### **498B Conduct of directors, employees and agents**

#### *Bodies corporate—conduct*

- (1) Any conduct engaged in on behalf of a body corporate:
- (a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

#### *Bodies corporate—state of mind*

- (2) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a person as mentioned in paragraph (1)(a) or (b); and
  - (b) that the person had that state of mind.

#### *Persons other than bodies corporate—conduct*

- (3) Any conduct engaged in on behalf of a person other than a body corporate:
- (a) by an employee or agent of the person within the scope of his or her actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;

is to be taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

*Persons other than bodies corporate—state of mind*

- (4) If, for the purposes of this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a person as mentioned in paragraph (3)(a) or (b); and
  - (b) that the person had that state of mind.

*Reasonable precautions*

- (5) For the purposes of subsection (1) or (3), in determining whether a body corporate or other person took reasonable precautions and exercised due diligence to avoid particular conduct, a court must have regard to what steps (if any) the body or person took directed towards ensuring the following (to the extent that the steps are relevant to the conduct):
- (a) that the body or person arranges regular professional assessments of the body's or person's compliance with this Act and the regulations;
  - (b) that the body or person implements any appropriate recommendations arising from such an assessment;
  - (c) that the body or person has an appropriate system established for managing the effects of the body's or person's activities on the environment;
  - (d) that the directors of the body, or the employees or agents of the body or person, have a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations, in so far as those requirements affect the directors, employees or agents concerned.

*Meaning of state of mind*

- (6) A reference in subsection (2) or (4) to the *state of mind* of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and

- (b) the person's reasons for the intention, opinion, belief or purpose.

*Meaning of director*

- (7) A reference in this section to a *director* of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

*Meaning of engage in conduct*

- (8) A reference in this section to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.

*Disapplying Part 2.5 of Criminal Code*

- (9) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

**775 Paragraph 503(a)**

Omit "the making of recovery plans and threat abatement plans", substitute "recovery plans, threat abatement plans and approved conservation advice".

**776 After paragraph 514B(1)(b)**

Insert:

- (ba) to contribute to the protection, conservation and management of biodiversity and heritage in areas outside Commonwealth reserves and conservation zones; and

**777 Paragraph 514B(1)(h)**

After "under", insert "this or".

**778 Subsection 514B(1) (note)**

Repeal the note, substitute:

Note 1: Section 514D sets out requirements relating to the performance of the Director's functions.

Note 2: The Minister may delegate additional functions to the Director under subsection 515(1).

## 779 After section 517

Insert:

### 517A Exemption for activities that might harm particular species introduced into particular areas

*Provisions for which this section applies*

- (1) This section applies for the purposes of the provisions of the following sections:
  - (a) sections 18 and 18A;
  - (b) sections 20 and 20A;
  - (c) sections 196 to 196E;
  - (d) section 207B;
  - (e) sections 211 to 211E;
  - (f) sections 254 to 254E.

*Minister may exempt carrying on of activities*

- (2) The Minister may, in writing, exempt from the provisions mentioned in subsection (1) the carrying on of particular activities by particular persons (or a particular class of persons), in a particular area, that will or may have an impact on a particular species or its habitat. The species must be a listed threatened species, a listed migratory species or a listed marine species.

*Matters Minister must be satisfied of*

- (3) An exemption under subsection (2) may only be given if the Minister is satisfied that:
  - (a) members of the species have been, or are proposed to be, introduced into the area by or on behalf of a person (whether the person is a Commonwealth agency or otherwise); and
  - (b) the purpose of the introduction, or proposed introduction, of the members of the species into the area was or is to make a contribution to the conservation of the species; and
  - (c) carrying on the activities in the area will or may have an impact on members of the species, or their habitat, but any

such impact would be incidental to, and not the purpose of, the activities; and

- (d) if the person referred to in paragraph (a) is not the person who is or will be primarily responsible for carrying out the activities—the person who is or will be so responsible has agreed to the introduction of the members of the species into the area.
- (4) For the purpose of deciding whether to give an exemption under subsection (2), the Minister may (subject to subsection (3)):
- (a) have regard to any matters the Minister considers appropriate; and
  - (b) seek, and have regard to, information or advice from any source.

*What must be specified in an exemption*

- (5) An exemption under subsection (2) must:
- (a) specify the species to which it applies; and
  - (b) specify the area to which it applies; and
  - (c) specify the activities to which it applies; and
  - (d) specify the persons (or classes of persons) who, if they engage in actions that are within the activities, are covered by the exemption.

*When an exemption comes into force*

- (6) An exemption under subsection (2) comes into force on the day the Minister gives the exemption, or on a later day specified in the exemption.

*Actions covered by exemption do not contravene provisions for which this section applies*

- (7) While an exemption under subsection (2) is in force, an action of a person does not contravene any of the provisions mentioned in subsection (1), in so far as the provisions apply in relation to a member of the species specified as mentioned in paragraph (5)(a), if:
- (a) the action occurs in the area specified as mentioned in paragraph (5)(b); and

- (b) the action is within the activities specified as mentioned in paragraph (5)(c); and
- (c) the person is a person, or is a member of a class of persons, specified as mentioned in paragraph (5)(d).

Note 1: If the action also has an impact on a member of another species that is not covered by an exemption under subsection (2), subsection (7) does not affect the question whether the action may contravene a provision mentioned in subsection (1), in so far as the provision applies to the other species.

Note 2: In a prosecution for an offence against a provision mentioned in subsection (1), the defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

*Exemption is not a legislative instrument*

- (8) An exemption under subsection (2) is not a legislative instrument.

## 780 After section 520

Insert:

### 520A Statements about the application of the Act

- (1) The Minister may issue, in writing, statements about the way in which the Minister considers that provisions of the Act or the regulations apply or would apply to:
  - (a) persons generally or a class of persons; or
  - (b) persons generally or a class of persons in relation to particular circumstances.
- (2) A statement made under subsection (1) is not a legislative instrument.

## 781 After subsection 525(2)

Insert:

*Freehold land in Christmas Island Territory is not a Commonwealth area*

- (2A) Despite subparagraph (1)(c)(i), an area of land in the Territory of Christmas Island is not a **Commonwealth area** merely because of that subparagraph if a person holds a freehold interest in the land.

**782 Before subsection 525(3)**

Insert:

*Freehold land in Cocos (Keeling) Islands Territory is not a Commonwealth area*

- (2B) Despite subparagraph (1)(c)(i), an area of land in the Territory of Cocos (Keeling) Islands is not a **Commonwealth area** merely because of that subparagraph if a person holds a freehold interest in the land.

**783 At the end of Division 1 of Part 23**

Add:

**Subdivision F—Impacts**

**527E Meaning of *impact***

- (1) For the purposes of this Act, an event or circumstance is an **impact** of an action taken by a person if:
- (a) the event or circumstance is a direct consequence of the action; or
  - (b) for an event or circumstance that is an indirect consequence of the action—subject to subsection (2), the action is a substantial cause of that event or circumstance.
- (2) For the purposes of paragraph (1)(b), if:
- (a) a person (the **primary person**) takes an action (the **primary action**); and
  - (b) as a consequence of the primary action, another person (the **secondary person**) takes another action (the **secondary action**); and
  - (c) the secondary action is not taken at the direction or request of the primary person; and
  - (d) an event or circumstance is a consequence of the secondary action;
- then that event or circumstance is an **impact** of the primary action only if:
- (e) the primary action facilitates, to a major extent, the secondary action; and

- (f) the secondary action is:
  - (i) within the contemplation of the primary person; or
  - (ii) a reasonably foreseeable consequence of the primary action; and
- (g) the event or circumstance is:
  - (i) within the contemplation of the primary person; or
  - (ii) a reasonably foreseeable consequence of the secondary action.

**784 Section 528**

Insert:

*accredited authorisation process* has the meaning given by subsection 33(2A).

**785 Section 528**

Insert:

*accredited management arrangement* has the meaning given by subsection 33(2).

**786 Section 528 (definition of *accredited management plan*)**

Repeal the definition.

**787 Section 528**

Insert:

*Antarctic* has the same meaning as in the *Antarctic Treaty (Environment Protection) Act 1980*.

**788 Section 528 (definition of *Apia Convention*)**

Omit “as in force for Australia immediately before the commencement of this Act”, substitute “as amended and in force for Australia from time to time”.

**789 Section 528**

Insert:

*approved conservation advice* has the meaning given by subsection 266B(2).



**790 Section 528 (definition of *Australian platform*)**

Repeal the definition.

**791 Section 528**

Insert:

*Australian Whale Sanctuary* has the meaning given by subsection 225(2).

**792 Section 528**

Insert:

*authorisation process* means a process set out in a law of the Commonwealth or a State or Territory under which actions are authorised.

**793 Section 528**

Insert:

*bilaterally accredited authorisation process* has the meaning given by subsection 46(2A).

**794 Section 528**

Insert:

*bilaterally accredited management arrangement* has the meaning given by subsection 46(2).

**795 Section 528 (definition of *bilaterally accredited management plan*)**

Repeal the definition.

**796 Section 528 (definition of *Biodiversity Convention*)**

Omit “as in force for Australia immediately before the commencement of this Act”, substitute “as amended and in force for Australia from time to time”.

**797 Section 528**

Insert:

*bioregional plan* means a bioregional plan for a bioregion as mentioned in section 176.

**798 Section 528 (definition of *Bonn Convention*)**

Omit “as in force for Australia immediately before the commencement of this Act”, substitute “as amended and in force for Australia from time to time”.

**799 Section 528 (at the end of the definition of *business day*)**

Add:

Note: In Chapter 5, the meaning of *business day* is affected by section 170D.

**800 Section 528 (definition of *CAMBA*)**

Omit “as in force for Australia immediately before the commencement of this Act”, substitute “as amended and in force for Australia from time to time”.

**801 Section 528 (definition of *cetacean*)**

Repeal the definition, substitute:

*cetacean* means a member of the sub-order Mysticeti or Odontoceti of the Order Cetacea, and includes:

- (a) a part of such a member; and
- (b) any animal reproductive material of such a member, or any part of such reproductive material; and
- (c) any product derived from a such a member; and
- (d) the whole or part of the dead body of such a member; and
- (e) any product derived from the dead body, or part of the dead body, of such a member.

**802 Section 528 (definition of *Commonwealth Heritage List*)**

Omit “kept under Subdivision B of Division 3A of Part 15”, substitute “referred to in section 341C”.

**803 Section 528 (definition of *Commonwealth Heritage place*)**

Omit “341C(2)”, substitute “341C(3)”.

**804 Section 528**

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Insert:

**control:** a Commonwealth agency **controls** a place only if the agency has rights (whether arising under a law, lease, licence or otherwise) to:

- (a) occupy or use the place; and
- (b) take actions in relation to the place that could potentially have an impact on heritage values that the place may have.

**805 Section 528**

Insert:

**copy**, when used in relation to a warrant issued under section 409 or 416 (or a form of warrant completed under subsection 409A(6) or 416(6)), includes:

- (a) a copy sent by fax or other electronic means; or
- (b) a copy of a copy so sent.

**806 Section 528 (definition of *ecological community*)**

After “means”, insert “the extent in nature in the Australian jurisdiction of”.

**807 Section 528 (paragraph (e) of the definition of *environment*)**

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

**808 Section 528 (note at the end of the definition of *environment*)**

Repeal the note.

**809 Section 528**

Insert:

**environmental authorisation** has the meaning given by section 43A.

**810 Section 528 (definition of *executing officer*)**

Repeal the definition, substitute:

**executing officer**, in relation to a warrant, means:

- (a) the authorised officer named in the warrant as being responsible for executing the warrant; or
- (b) if that authorised officer does not intend to be present at the execution of the warrant—another authorised officer whose name has been written in the warrant by the authorised officer so named; or
- (c) another authorised officer whose name has been written in the warrant by the authorised officer last named in the warrant.

**811 Section 528 (definition of *export*)**

Repeal the definition.

**812 Section 528 (definition of *export from the sea*)**

Repeal the definition.

**813 Section 528 (paragraph (b) of the definition of *holder*)**

Omit “to whom the approval applies”, substitute “named in the approval under paragraph 133(2)(c)”.

**814 Section 528**

Insert:

*impact* has the meaning given by section 527E.

**815 Section 528**

Insert:

*important cetacean habitat area* means an area declared, by a declaration in force under subsection 228A(1), to be an important cetacean habitat area.

**816 Section 528 (definition of *imported*)**

Repeal the definition.

**817 Section 528 (definition of *JAMBA*)**

Omit “as in force for Australia immediately before the commencement of this Act”, substitute “as amended and in force for Australia from time to time”.

**818 Section 528**

Insert:

*List of Overseas Places of Historic Significance to Australia*  
means the record referred to in section 390K.

**819 Section 528**

Insert:

*management arrangement* includes:

- (a) a management plan; and
- (b) a regime; and
- (c) a policy.

**820 Section 528 (definition of *member*)**

Repeal the definition, substitute:

*member* includes:

- (a) in relation to a species of animal (other than a species of cetacean):
  - (i) any part of an animal of the species; and
  - (ii) any animal reproductive material of an animal of the species, or any part of such reproductive material; and
  - (iii) the whole or any part of the dead body of an animal of the species; and
- (b) in relation to a species of plant:
  - (i) any part of a plant of the species; and
  - (ii) any plant reproductive material of a plant of the species, or any part of such reproductive material; and
  - (iii) the whole or any part of a plant of the species that has died; and
- (c) in relation to an ecological community:
  - (i) any part of an animal or plant of the community; and
  - (ii) any animal reproductive material of an animal, or plant reproductive material of a plant, of the community, or any part of such animal reproductive material or plant reproductive material; and
  - (iii) the whole or any part of an animal or plant of the community that has died.

**821 Section 528**

Insert:

*migration zone* has the same meaning as in the *Migration Act 1958*.

**822 Section 528**

Insert:

*migratory species* has the meaning given by subsection 209(8).

**823 Section 528 (definition of *National Heritage List*)**

Omit “kept under Subdivision B of Division 1A of Part 15”, substitute “referred to in section 324C”.

**824 Section 528 (definition of *National Heritage place*)**

Omit “324C(2)”, substitute “324C(3)”.

**825 Section 528**

Insert:

*Officer of Customs* has the same meaning as in the *Customs Act 1901*.

**826 Section 528 (paragraph (a) of the definition of *place*)**

After “region”, insert “or a number of locations, areas or regions”.

**827 Section 528 (definition of *Ramsar Convention*)**

Omit “as in force for Australia immediately before the commencement of this Act”, substitute “as amended and in force for Australia from time to time”.

**828 Section 528**

Insert:

*remediation determination* means a determination, as in force from time to time, made under section 480D.

**829 Section 528**

Insert:

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*remediation order* means an order, as in force from time to time, made under section 480A.

**830 Section 528**

Insert:

*seized* has a meaning affected by section 406B.

**831 Section 528**

Insert:

*specific environmental authorisation* has the meaning given by section 43A.

**832 Section 528**

Insert:

*take*, except in Part 13A, includes:

- (a) in relation to an animal—harvest, catch, capture and trap; and
- (b) in relation to a plant—harvest, pick, gather and cut.

Note: For the meaning of *take* in Part 13A, see section 303BC.

**833 Section 528 (definition of *Trade*)**

Repeal the definition, substitute:

*trade*:

- (a) when used in the context of a reference to a member of a listed threatened species, listed migratory species, listed marine species or listed threatened ecological community—includes:
  - (i) buy the member, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or
  - (ii) sell the member, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or
  - (iii) export the member from Australia or an external Territory or import it into Australia or an external Territory; or

- (iv) cause or allow any of the acts referred to in subparagraph (i), (ii) or (iii) to be done; or
- (b) when used in the context of a reference to a cetacean (not being a reference that covers a cetacean because a cetacean is a member referred to in paragraph (a))—has the meaning given by subsection 229B(4).

**834 Section 528 (definition of *World Heritage Convention*)**

Omit “as in force for Australia immediately before the commencement of this Act”, substitute “as amended and in force for Australia from time to time”.

**835 At the end of the Act**

Add:

## **Schedule 1—Provisions relating to detention of suspected foreign offenders**

Note: See section 433B.

### **Part 1—Preliminary**

#### **Division 1—Objects of this Schedule**

##### **1 Main objects of this Schedule**

- (1) This Schedule has 3 main objects.
- (2) The first main object is to provide for the detention (*environment detention*) in Australia or a Territory of persons who:
  - (a) are reasonably suspected by an authorised officer of having committed an offence:
    - (i) involving the use of a foreign vessel; or
    - (ii) in the Australian jurisdiction but outside the migration zone; and
  - (b) are not Australian citizens or Australian residents; for a limited period for the purposes of determining whether to charge them with the offence.



- (3) The second main object is to provide for persons in environment detention to be searched, screened, given access to facilities for obtaining legal advice, and identified.
- (4) The third main object is to facilitate the transition of persons from environment detention to immigration detention under the *Migration Act 1958*:
- (a) by providing for the things mentioned in subclause (3) to be done in a way corresponding to the way that Act provides for those things to be done to persons in immigration detention; and
  - (b) by authorising the disclosure of personal information about individuals who are or have been in environment detention to persons, agencies and organisations responsible for holding the individuals in immigration detention, for the purpose of the immigration detention and welfare of the individuals.

Note: The enforcement visa of a person who is neither an Australian citizen nor an Australian resident ceases to have effect under the *Migration Act 1958* when the person ceases to be in environment detention, so that Act requires the person to be taken into immigration detention.

## Division 2—Definitions

### 2 Definitions

In this Schedule, unless the contrary intention appears:

***approved officer*** means:

- (a) an authorised officer (other than a person who is an authorised officer because of subsection 397(3)); or
- (b) a detention officer;

who is approved under Division 4 for the purposes of the provision in which the expression occurs.

***Australian resident*** means:

- (a) a person who holds a permanent visa (as defined in the *Migration Act 1958*) that is in effect; or
- (b) a New Zealand citizen who is usually resident in Australia or a Territory and who holds a special category visa (as defined in the *Migration Act 1958*) that is in effect; or
- (c) any other person who is usually resident in Australia or a Territory and whose continued presence in Australia or a

Territory is not subject to a limitation as to time imposed by law.

*authorised Migration Act officer* means an authorised officer, within the meaning of the *Migration Act 1958*.

*detainee* means a person detained under Part 2.

*detention* means detention under Part 2.

*detention officer* means a person appointed under clause 3 to be a detention officer.

*foreign vessel* means a vessel that is not an Australian vessel.

### **Division 3—Appointment etc. of detention officers**

#### **3 Minister may appoint persons to be detention officers**

- (1) The Minister may, by instrument, appoint one or more persons (except persons who are authorised officers) to be detention officers.

Note: Authorised officers have the same powers as detention officers, as well as other powers, so there is no reason for authorised officers to be appointed as detention officers.

- (2) An instrument appointing persons to be detention officers:
  - (a) may identify the persons by reference to a class; and
  - (b) may provide for persons to be appointed when they become members of the class at or after a time specified in the instrument.

#### **4 Detention officers subject to directions**

- (1) A detention officer is, in the exercise of his or her powers, and the performance of his or her duties, under this Schedule, subject to the directions given by the Minister.
- (2) A direction given by the Minister under subclause (1) is a legislative instrument, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the direction.

## **5 Detention officer etc. not liable to certain actions**

- (1) A detention officer, or a person assisting a detention officer in the exercise of powers under this Schedule or the regulations, is not liable to an action, suit or proceeding for or in respect of anything done in good faith or omitted to be done in good faith in the exercise or purported exercise of any power conferred by this Schedule or by regulations made for the purposes of this Schedule.

Note: Section 498A makes similar provision for authorised officers and their assistants.

- (2) However, subclause (1) does not affect a contractual liability of a detention officer or person assisting a detention officer.

## **Division 4—Approval of authorised officers and detention officers**

### **6 The Secretary may approve authorised officers and detention officers**

- (1) The Secretary may, by instrument, approve one or more authorised officers and/or detention officers for the purposes of a specified provision of this Schedule, from among authorised officers and/or detention officers who have successfully completed minimum training prescribed by the regulations.
- (2) An instrument approving authorised officers and/or detention officers:
- (a) may identify them by reference to a class; and
  - (b) may provide for them to be approved when they become members of the class at or after a time specified in the instrument.

### **7 Persons who are authorised officers for purposes of the *Migration Act 1958* are taken to be approved for this Schedule**

- (1) A person who:
- (a) is an authorised officer or a detention officer; and
  - (b) is an authorised Migration Act officer for a provision of the *Migration Act 1958* listed in column 2 of an item of the table;

**Schedule 1** Amendment of Acts

**Part 1** Amendment of the Environment Protection and Biodiversity Conservation Act 1999

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is, while he or she meets the conditions in paragraphs (a) and (b), taken to be approved under clause 6 for the purposes of the provision of this Schedule listed in column 3 of the item.

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**Corresponding provisions of the *Migration Act 1958* and this Schedule**

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<b>Column 1 Item</b>	<b>Column 2 Provision of the <i>Migration Act 1958</i></b>	<b>Column 3 Provision of this Schedule</b>
1	Subsection 252(4)	Subclause 15(3)
2	Paragraph 252(6)(a)	Paragraph 15(5)(a)
3	Subparagraph 252(6)(b)(i)	Subparagraph 15(5)(b)(i)
4	Subsection 252AA(1)	Subclause 16(1)
5	Subsection 252A(1)	Subclause 17(1)
6	Subsection 252C(1)	Subclause 19(1)
7	Subsection 252D(2)	Subclause 20(2)
8	Subsection 252G(3)	Subclause 22(3)
9	Section 261AA	Clause 28
10	Subsection 261AE(1)	Subclause 32(1)
11	Subsection 261AE(3)	Subclause 32(3)
12	Section 261AG	Clause 34
13	Section 261AJ	Clause 37
14	Subsection 261AK(1) (except paragraph (a))	Subclause 38(1) (except paragraph (a))
15	Subsection 261AK(3)	Subclause 38(3)

*Limits on approval*

- (2) However, the person is not taken to be approved to carry out an identification test in relation to which section 5D of the *Migration Act 1958* provides that the person is not an authorised officer (for the purposes of that Act).

Note: This is relevant to items 9 to 15 of the table in subclause (1).

*Persons specified by Secretary not approved*

- (3) The Secretary may, by instrument, specify that the person is not taken to be approved:
- (a) for the purposes of the provision of this Schedule; or

(b) for the purposes of carrying out under this Schedule identification tests of a type specified under section 5D of the *Migration Act 1958* in relation to the person.

The instrument has effect according to its terms, despite subclause (1).

- (4) An instrument under subclause (3) may specify one or more persons by reference to their being members of a specified class at or after a time specified in the instrument.
- (5) An instrument made under subclause (3) is not a legislative instrument.

## **Part 2—Detaining suspected foreign offenders**

### **Division 1—Initial detention by an authorised officer**

#### **8 Power to detain**

- (1) An authorised officer may detain a person in Australia or a Territory for the purposes of determining during the period of detention whether or not to charge the person with an offence against this Act or the regulations, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, if the authorised officer has reasonable grounds to believe that the person:
- (a) is not an Australian citizen or an Australian resident; and
  - (b) either or both of the following:
    - (i) was on a foreign vessel when it was used or otherwise involved in the commission of the offence;
    - (ii) committed the offence in the Australian jurisdiction but outside the migration zone.
- (2) Subclause (1) does not authorise an authorised officer to use more force in detaining a person than is reasonably necessary.

#### **9 Relationship with Part IC of the *Crimes Act 1914***

- (1) Part IC of the *Crimes Act 1914* applies in relation to the detainee while detained under this Part as if:

- (a) he or she were a protected suspect for a Commonwealth offence for the purposes of that Part; and
  - (b) an authorised officer were an investigating official for the purposes of that Part.
- (2) Subclause (1) does not affect the operation of Division 2 of Part IC of the *Crimes Act 1914* as it applies of its own force in relation to a person who is lawfully arrested.

## **Division 2—Continued detention by a detention officer**

### **10 Detention officer may detain person already detained by authorised officer**

- (1) For the purposes of facilitating an authorised officer determining whether or not to charge a person with an offence against this Act or the regulations, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, a detention officer may detain the person in Australia or a Territory if the detention officer has reasonable grounds to believe that the person:
- (a) has been detained by an authorised officer under Division 1; and
  - (b) has been presented, while detained by that authorised officer, to a detention officer for detention by a detention officer.
- (2) However, the detention officer may not detain the person if the detention officer has reasonable grounds to believe that the person has ceased to be in detention since the last time the person was detained by an authorised officer under Division 1.
- (3) Subclause (1) does not authorise a detention officer to use more force in detaining a person than is reasonably necessary.

## **Division 3—Detention on behalf of an authorised officer or detention officer**

### **11 Detention on behalf of an authorised officer or detention officer**

- (1) A person is taken to be detained by an authorised officer or detention officer under this Part while the person is held, on behalf of the authorised officer or detention officer, in any of the following:
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- (a) a prison or remand centre;
  - (b) a police station or watch house;
  - (c) a hospital or other place where the person is receiving medical treatment;
  - (d) another place approved by the Minister in writing;
  - (e) a vessel.
- (2) This clause has effect even while the authorised officer or detention officer is not present where the person is held on behalf of the authorised officer or detention officer.
- (3) An approval of a place by the Minister is not a legislative instrument.

## **Division 4—Moving detainees**

### **12 Power to move detainees**

- (1) An authorised officer or detention officer may:
- (a) take a detainee in Australia to another place in Australia or to a place in an external Territory; and
  - (b) take a detainee in an external Territory to another place in the Territory or to a place in Australia or another Territory.
- (2) Subclause (1) does not authorise an authorised officer or detention officer to use more force than is reasonably necessary to take the detainee to the place.
- (3) In exercising the power under subclause (1), the authorised officer or detention officer must have regard to all matters that he or she considers relevant, including:
- (a) the administration of justice; and
  - (b) the welfare of the detainee.

## **Division 5—End of detention**

### **13 End of detention**

A detainee must be released from detention:

- (a) as soon as an authorised officer or detention officer knows or reasonably believes that the detainee is an Australian citizen or an Australian resident; or
  - (b) at the time the detainee is brought before a magistrate following a decision to charge the detainee with an offence referred to in subclause 8(1); or
  - (c) at the time a decision is made not to charge the detainee with an offence referred to in that subclause; or
  - (d) at the end of 168 hours after the detention began;
- whichever occurs first.

## **Division 6—Offence of escaping from detention**

### **14 Escape from detention**

- (1) A person commits an offence if:
  - (a) the person is in detention; and
  - (b) the person escapes from that detention.
- (2) The offence is punishable on conviction by imprisonment for up to 2 years.

## **Part 3—Searching and screening detainees and screening their visitors**

### **Division 1—Searches of detainees**

#### **15 Searches of detainees**

- (1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched.
- (2) The purposes for which a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may be searched under this clause are as follows:
  - (a) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a weapon or other thing capable of being used to inflict bodily injury or to help the detainee to escape from detention;



- (b) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a document or other thing that is, or may be, evidence of:
    - (i) an offence against this Act or the regulations; or
    - (ii) an offence against section 6 of the *Crimes Act 1914* relating to an offence described in subparagraph (i).
- (3) If, in the course of a search under this clause, a weapon or other thing referred to in paragraph (2)(a), or a document or other thing referred to in paragraph (2)(b), is found, an approved officer:
  - (a) may take possession of the weapon, document or other thing; and
  - (b) may retain the weapon, document or other thing for such time as he or she thinks necessary for the purposes of this Act or the *Migration Act 1958*.
- (4) This clause does not authorise an approved officer, or another person conducting a search pursuant to subclause (5), to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.
- (5) A search under this clause of a detainee, and the detainee's clothing, must be conducted by:
  - (a) an approved officer of the same sex as the detainee; or
  - (b) in a case where an approved officer of the same sex as the detainee is not available to conduct the search—any other person who is of the same sex and:
    - (i) is requested by an approved officer; and
    - (ii) agrees;to conduct the search.
- (6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an approved officer, conducts a search under this clause if the person acts in good faith and does not contravene subclause (7).
- (7) An approved officer or other person who conducts a search under this clause must not use more force, or subject a detainee to greater indignity, than is reasonably necessary in order to conduct the search.

- (8) To avoid doubt, a search of a detainee may be conducted under this clause irrespective of whether a screening procedure is conducted in relation to the detainee under clause 16 or a strip search of the detainee is conducted under clause 17.

Note: This clause corresponds closely to section 252 of the *Migration Act 1958*.

## Division 2—Screening of detainees

### 16 Power to conduct a screening procedure

- (1) A screening procedure in relation to a detainee, other than a detainee to whom clause 23 applies, may be conducted by an approved officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:
- (a) to inflict bodily injury; or
  - (b) to help the detainee, or any other detainee, to escape from detention.
- (2) An approved officer who conducts a screening procedure under this clause must not use greater force, or subject the detainee to greater indignity, than is reasonably necessary in order to conduct the screening procedure.
- (3) This clause does not authorise an approved officer to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.
- (4) To avoid doubt, a screening procedure may be conducted in relation to a detainee under this clause irrespective of whether a search of the detainee is conducted under clause 15 or 17.
- (5) In this clause:
- conducting a screening procedure***, in relation to a detainee, means:
- (a) causing the detainee to walk, or to be moved, through screening equipment; or
  - (b) passing hand-held screening equipment over or around the detainee or around things in the detainee's possession; or

- (c) passing things in the detainee's possession through screening equipment or examining such things by X-ray.

**screening equipment** means a metal detector or similar device for detecting objects or particular substances.

Note: This clause corresponds closely to section 252AA of the *Migration Act 1958*.

## **Division 3—Strip searches of detainees**

### **17 Power to conduct a strip search**

- (1) A strip search of a detainee, other than a detainee to whom clause 23 applies, may be conducted by an approved officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:
- (a) to inflict bodily injury; or
  - (b) to help the detainee, or any other detainee, to escape from detention.

Note: Clause 18 sets out rules for conducting a strip search under this clause.

- (2) A **strip search** of a detainee means a search of the detainee, of his or her clothing or of a thing in his or her possession. It may include:
- (a) requiring the detainee to remove some or all of his or her clothing; and
  - (b) an examination of that clothing and of the detainee's body (but not of the detainee's body cavities).
- (3) A strip search of a detainee may be conducted by an approved officer only if:
- (a) an authorised officer or detention officer suspects on reasonable grounds that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause (1); and
  - (b) the authorised officer, or detention officer, referred to in paragraph (a) suspects on reasonable grounds that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing; and
  - (c) the strip search is authorised as follows:

- (i) if the detainee is at least 18—the Secretary, the Director, or an SES Band 3 employee in the Department (who is not the authorised officer referred to in paragraphs (a) and (b) nor the approved officer conducting the strip search), authorises the strip search because he or she is satisfied that there are reasonable grounds for those suspicions;
    - (ii) if the detainee is at least 10 but under 18—a magistrate orders the strip search because he or she is satisfied that there are reasonable grounds for those suspicions.
  - (4) An authorised officer or detention officer may form a suspicion on reasonable grounds for the purposes of paragraph (3)(a) on the basis of:
    - (a) a search conducted under clause 15 (whether by that authorised officer or detention officer or by another authorised officer or detention officer); or
    - (b) a screening procedure conducted under clause 16 (whether by that authorised officer or detention officer or by another authorised officer or detention officer); or
    - (c) any other information that is available to the authorised officer or detention officer.
  - (5) An authorisation of a strip search given for the purposes of subparagraph (3)(c)(i):
    - (a) may be given by telephone, fax or other electronic means; and
    - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
  - (6) A record made under paragraph (5)(b) is not a legislative instrument.
  - (7) A failure to comply with paragraph (5)(b) does not affect the validity of a strip search conducted on the basis of that authorisation.
  - (8) The power to authorise a strip search under subparagraph (3)(c)(i) cannot be delegated to any other person.
  - (9) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
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- (10) The magistrate need not accept the power conferred.
- (11) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.
- (12) To avoid doubt, a strip search of a detainee may be conducted under this clause irrespective of whether a search of the detainee is conducted under clause 15 or a screening procedure is conducted in relation to the detainee under clause 16.
- (13) In this clause:

***SES Band 3 employee*** means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Note: This clause corresponds closely to section 252A of the *Migration Act 1958*.

## **18 Rules for conducting a strip search**

- (1) A strip search of a detainee under clause 17:
  - (a) must not subject the detainee to greater indignity than is reasonably necessary to conduct the strip search; and
  - (b) must be conducted in a private area; and
  - (c) must be conducted by an approved officer of the same sex as the detainee; and
  - (d) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person who is of the opposite sex to the detainee; and
  - (e) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the strip search; and
  - (f) must not be conducted on a detainee who is under 10; and
  - (g) if the detainee is at least 10 but under 18, or is incapable of managing his or her affairs—must be conducted in the presence of:
    - (i) the detainee's parent or guardian if that person is in detention with the detainee and is readily available at the same place; or

- (ii) if that is not acceptable to the detainee or subparagraph (i) does not apply—another person (other than an approved officer) who is capable of representing the detainee’s interests and who, as far as is practicable in the circumstances, is acceptable to the detainee; and
  - (h) subject to subclause (4), if the detainee is at least 18, and is not incapable of managing his or her affairs—must be conducted in the presence of another person (if any) nominated by the detainee, if that other person is readily available at the same place as the detainee, and willing to attend the strip search within a reasonable time; and
  - (i) must not involve a search of the detainee’s body cavities; and
  - (j) must not involve the removal of more items of clothing, or more visual inspection, than the approved officer conducting the search believes on reasonable grounds to be necessary to determine whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause 17(1); and
  - (k) must not be conducted with greater force than is reasonably necessary to conduct the strip search.
- (2) Paragraphs (1)(d) and (e) do not apply to a parent or guardian, or person present because of subparagraph (1)(g)(ii), if the detainee has no objection to that person being present.
- (3) Paragraphs (1)(d) and (e) do not apply to a person nominated by the detainee under paragraph (1)(h) to attend the strip search.
- (4) Neither:
- (a) a detainee’s refusal or failure to nominate a person under paragraph (1)(h) within a reasonable time; nor
  - (b) a detainee’s inability to nominate a person under that paragraph who is readily available at the same place as the detainee and willing to attend the strip search within a reasonable time;
- prevents a strip search being conducted.

- (5) A strip search of a detainee may be conducted with the assistance of another person if the approved officer conducting the strip search considers that to be necessary for the purposes of conducting it. That person must not be of the opposite sex to the detainee unless:
- (a) the person is a medical practitioner; and
  - (b) a medical practitioner of the same sex as the detainee is not available within a reasonable time.
- (6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an approved officer, assists in conducting a strip search if the person acts in good faith and does not contravene this clause.
- (7) A detainee must be provided with adequate clothing if during or as a result of a strip search any of his or her clothing is:
- (a) damaged or destroyed; or
  - (b) retained under clause 19.

Note: This clause corresponds closely to section 252B of the *Migration Act 1958*.

#### **Division 4—Keeping of things found by screening or strip search of detainees**

##### **19 Possession and retention of certain things obtained during a screening procedure or strip search**

- (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing:
- (a) might provide evidence of the commission of an offence against this Act or the regulations, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence; or
  - (b) is forfeited or forfeitable to the Commonwealth.
- (2) A weapon or other thing described in subclause 16(1) or 17(1) that is found in the course of conducting a screening procedure under clause 16 or a strip search under clause 17 is forfeited to the Commonwealth.

- (3) An approved officer must not return a thing that is forfeited or forfeitable to the Commonwealth. Instead, the approved officer must, as soon as practicable, give a thing that is forfeited under subclause (2) to a constable (within the meaning of the *Crimes Act 1914*).

Note: See sections 450 and 451 of this Act, which deal with court-ordered forfeiture and how forfeited items are to be dealt with.

- (4) An approved officer must take reasonable steps to return anything that is not forfeited or forfeitable but is retained under subclause (1) to the person from whom it was taken, or to the owner if that person is not entitled to possess it, if one of the following happens:
- (a) it is decided that the thing is not to be used in evidence;
  - (b) the period of 60 days after the approved officer takes possession of the thing ends.
- (5) However, the approved officer does not have to take those steps if:
- (a) in a paragraph (4)(b) case:
    - (i) proceedings in respect of which the thing might provide evidence have been instituted before the end of the 60 day period and have not been completed (including an appeal to a court in relation to those proceedings); or
    - (ii) the approved officer may retain the thing because of an order under clause 21; or
  - (b) in any case—the approved officer is otherwise authorised (by a law, or an order of a court or a tribunal, of the Commonwealth or a State or Territory) to retain, destroy or dispose of the thing.

Note: This clause corresponds closely to section 252C of the *Migration Act 1958*.

## **20 Approved officer may apply for a thing to be retained for a further period**

- (1) This clause applies if an approved officer has taken possession of a thing referred to in subclause 19(4) and proceedings in respect of which the thing might provide evidence have not commenced before the end of:
- (a) 60 days after the approved officer takes possession of the thing; or



- (b) a period previously specified in an order of a magistrate under clause 21.
- (2) The approved officer may apply to a magistrate for an order that the approved officer may retain the thing for a further period.
- (3) Before making the application, the approved officer must:
  - (a) take reasonable steps to discover which persons' interests would be affected by the retention of the thing; and
  - (b) if it is practicable to do so, notify each person who the approved officer believes to be such a person of the proposed application.
- (4) A notice under paragraph (3)(b) is not a legislative instrument.

Note: This clause corresponds closely to section 252D of the *Migration Act 1958*.

## **21 Magistrate may order that thing be retained**

- (1) The magistrate may order that the approved officer who made an application under clause 20 may retain the thing if the magistrate is satisfied that it is necessary for the approved officer to do so:
  - (a) for the purposes of an investigation as to whether an offence has been committed; or
  - (b) to enable evidence of an offence to be secured for the purposes of a prosecution.
- (2) The order must specify the period for which the approved officer may retain the thing.
- (3) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (4) The magistrate need not accept the power conferred.
- (5) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

Note: This clause corresponds closely to section 252E of the *Migration Act 1958*.

## Division 5—Screening detainees’ visitors

### 22 Powers concerning entry to premises where detainee is detained

- (1) An authorised officer or detention officer may request that a person about to enter premises where a detainee is in detention do one or more of the following:
  - (a) walk through screening equipment;
  - (b) allow an authorised officer or detention officer to pass hand-held screening equipment over or around the person or around things in the person’s possession;
  - (c) allow things in the person’s possession to pass through screening equipment or to be examined by X-ray.
- (2) **Screening equipment** means a metal detector or similar device for detecting objects or particular substances.
- (3) If an approved officer suspects on reasonable grounds that a person about to enter premises where a detainee is in detention has in the person’s possession a thing that might:
  - (a) endanger the safety of the detainees, staff or other persons on the premises; or
  - (b) disrupt the order or security arrangements on the premises;the approved officer may request that the person do some or all of the things in subclause (4) for the purpose of finding out whether the person has such a thing. A request may be made whether or not a request is also made to the person under subclause (1).
- (4) An approved officer may request that the person do one or more of the following:
  - (a) allow the approved officer to inspect the things in the person’s possession;
  - (b) remove some or all of the person’s outer clothing such as a coat, jacket or similar item;
  - (c) remove items from the pockets of the person’s clothing;
  - (d) open a thing in the person’s possession, or remove the thing’s contents, to allow the approved officer to inspect the thing or its contents;
  - (e) leave a thing in the person’s possession, or some or all of its contents, in a place specified by the approved officer if he or

she suspects on reasonable grounds that the thing or its contents are capable of concealing something that might:

- (i) endanger the safety of the detainees, staff or other persons on the premises; or
  - (ii) disrupt the order or security arrangements on the premises.
- (5) A person who leaves a thing (including any of its contents) in a place specified by an approved officer is entitled to its return when the person leaves the premises.
- (6) However, if possession of the thing, or any of those contents, by the person is unlawful under a Commonwealth, State or Territory law applying to the premises:
- (a) the thing or the contents must not be returned to the person; and
  - (b) an approved officer must, as soon as practicable, give the thing or the contents to a constable (within the meaning of the *Crimes Act 1914*).
- (7) A person who is about to enter premises where a detainee is detained may be refused entry if the person does not comply with a request under this clause.

Note: This clause corresponds closely to section 252G of the *Migration Act 1958*.

## **Division 6—Law applying to detainee in State or Territory prison etc.**

### **23 Detainees held in State or Territory prisons or remand centres**

- (1) This clause applies to a detainee if:
  - (a) the detainee is held in detention in a prison or remand centre of a State or Territory; and
  - (b) a law of that State or Territory confers a power to search persons, or things in the possession of persons, serving sentences or being held in the prison or remand centre.
- (2) To the extent that the State or Territory law confers that power, or affects the exercise of that power, it applies to the detainee as though it were a law of the Commonwealth.

- (3) Clauses 16 and 17 do not apply to a detainee to whom this clause applies.

Note: This clause corresponds closely to section 252F of the *Migration Act 1958*.

## Part 4—Detainees’ rights to facilities for obtaining legal advice etc.

### 24 Detainee may have access to certain advice, facilities etc.

The person responsible for detention of a detainee must afford to him or her all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to his or her detention.

Note: This clause corresponds to section 256 of the *Migration Act 1958*.

## Part 5—Identifying detainees

### Division 1—Preliminary

#### 25 Definitions

In this Part, unless the contrary intention appears:

**identification test** means a test carried out in order to obtain a personal identifier.

**incapable person** means a person who is incapable of understanding the general nature and effect of, and purposes of, a requirement to provide a personal identifier.

**independent person** means a person (other than an authorised officer, detention officer or approved officer) who:

- (a) is capable of representing the interests of a non-citizen who is providing, or is to provide, a personal identifier; and
- (b) as far as practicable, is acceptable to the non-citizen who is providing, or is to provide, the personal identifier; and
- (c) if the non-citizen is a minor—is capable of representing the minor’s best interests.

**minor** means a person who is less than 18 years old.

***non-citizen*** means a person who is not an Australian citizen.

***personal identifier*** has the meaning given by clause 26.

Note: The definitions of expressions in this clause correspond closely to definitions of those expressions in section 5 of the *Migration Act 1958*.

## **26 Meaning of *personal identifier***

(1) In this Part:

***personal identifier*** means any of the following (including any of the following in digital form):

- (a) fingerprints or handprints of a person (including those taken using paper and ink or digital livescanning technologies);
  - (b) a measurement of a person's height and weight;
  - (c) a photograph or other image of a person's face and shoulders;
  - (d) an audio or a video recording of a person (other than a video recording under clause 37);
  - (e) an iris scan;
  - (f) a person's signature;
  - (g) any other identifier prescribed by the regulations, other than an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*.
- (2) Before the Governor-General makes regulations for the purposes of paragraph (g) of the definition of ***personal identifier*** in subclause (1) prescribing an identifier, the Minister must be satisfied that:
- (a) obtaining the identifier would not involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*; and
  - (b) the identifier is an image of, or a measurement or recording of, an external part of the body; and
  - (c) obtaining the identifier will promote one or more of the purposes referred to in subclause (3).
- (3) The purposes are:
- (a) to assist in the identification of, and to authenticate the identity of, any non-citizen who can be required under this Schedule to provide a personal identifier; and

- (b) to assist in identifying, in the future, any such non-citizen; and
- (c) to enhance the ability to identify non-citizens who have a criminal history in matters relating to the environment; and
- (d) to combat document and identity fraud in matters relating to the environment; and
- (e) to complement anti-people smuggling measures; and
- (f) to inform the governments of foreign countries of the identity of non-citizens who have been detained under, or charged with offences against, this Act or the regulations; and
- (g) to facilitate international cooperation to combat activities that involve a breach of the laws of Australia or of a foreign country.

Note: This clause corresponds closely to section 5A of the *Migration Act 1958*.

## **27 Limiting the types of identification tests that approved officers may carry out**

- (1) The Secretary may, in an instrument authorising an authorised officer or detention officer as an approved officer for the purposes of carrying out identification tests under this Part, specify the types of identification tests that the approved officer may carry out.
- (2) Such an approved officer is not an approved officer in relation to carrying out an identification test that is not of a type so specified.

Note: This clause corresponds closely to section 5D of the *Migration Act 1958*.

## **Division 2—Identification of detainees**

### **Subdivision A—Provision of personal identifiers**

#### **28 Detainees must provide personal identifiers**

- (1) A non-citizen in detention must (other than in the prescribed circumstances) provide to an approved officer one or more personal identifiers.

Note: A person who is an Australian citizen, or is a non-citizen but an Australian resident, may be in detention but must be released as soon

as an authorised officer or detention officer knows or reasonably believes the person is an Australian citizen or resident. See clause 13.

- (2) An approved officer must not require, for the purposes of subclause (1), a detainee to provide a personal identifier other than any of the following (including any of the following in digital form):
- (a) fingerprints or handprints of the detainee (including those taken using paper and ink or digital liveness technologies);
  - (b) a measurement of the detainee's height and weight;
  - (c) a photograph or other image of the detainee's face and shoulders;
  - (d) the detainee's signature;
  - (e) any other personal identifier of a type prescribed for the purposes of this paragraph.

Note: Division 3 sets out further restrictions on the personal identifiers that minors and incapable persons can be required to provide.

- (3) The one or more personal identifiers are to be provided by way of one or more identification tests carried out by the approved officer in accordance with this Division.

Note 1: Subject to certain restrictions, clause 32 allows reasonable force to be used to carry out identification tests under this Division.

Note 2: This clause corresponds closely to section 261AA of the *Migration Act 1958*.

## **29 Approved officers must require and carry out identification tests**

- (1) The approved officer must, other than in the circumstances prescribed for the purposes of subclause 28(1):
- (a) require the non-citizen to provide one or more personal identifiers, of the type or types prescribed, by way of one or more identification tests carried out by the approved officer; and
  - (b) carry out the one or more identification tests on the non-citizen.
- (2) However:
- (a) if the types of identification tests that the approved officer may carry out are specified under clause 27—each identification test must be of a type so specified; and

- (b) each identification test must be carried out in accordance with Subdivision B; and
- (c) unless the approved officer has reasonable grounds to believe that the non-citizen is not a minor or an incapable person—each identification test must be carried out in accordance with the additional requirements of Division 3.

Note: Subclauses (1) and (2) correspond closely to section 261AB of the *Migration Act 1958*.

- (3) If:
  - (a) the approved officer is authorised because of clause 7 (which effectively treats as approved officers for the purposes of certain provisions of this Schedule certain persons who are authorised Migration Act officers for the purposes of certain provisions of the *Migration Act 1958*); and
  - (b) an instrument under section 5D of that Act specifies the types of identification test the authorised Migration Act officer may carry out;paragraph (2)(a) of this clause has effect as if the specified types (except any specified under subclause 7(3) in relation to the authorised Migration Act officer) had been specified under clause 27.

### **30 Information to be provided before carrying out identification tests**

- (1) Before carrying out an identification test, the approved officer must:
  - (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and
  - (b) inform the non-citizen of such other matters as are specified in the regulations.
- (2) For the purposes of subclause (1), the approved officer *informs* the non-citizen of a matter if the approved officer informs the non-citizen of the matter, through an interpreter if necessary, in a language (including sign language or braille) in which the non-citizen is able to communicate with reasonable fluency.



- (3) The approved officer may comply with this clause by giving to the non-citizen, in accordance with the regulations, a form setting out the information specified in the regulations. However, the information must be in a language (including braille) in which the non-citizen is able to communicate with reasonable fluency.
- (4) A form mentioned in subclause (3) is not a legislative instrument.

Note: This clause corresponds closely to section 261AC of the *Migration Act 1958*.

## **Subdivision B—How identification tests are carried out**

### **31 General rules for carrying out identification tests**

An identification test under this Division:

- (a) must be carried out in circumstances affording reasonable privacy to the non-citizen; and
- (b) if the non-citizen so requests and it is practicable to comply with the request—must not be carried out in the presence or view of a person who is of the opposite sex to the non-citizen; and
- (c) must not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the identification test or is not required or permitted by another provision of this Schedule; and
- (d) must not involve the removal of more clothing than is necessary for carrying out the test; and
- (e) must not involve more visual inspection than is necessary for carrying out the test; and
- (f) if the test is one of 2 or more identification tests to be carried out on the non-citizen—must be carried out at the same time as the other identification tests, if it is practicable to do so.

Note: This clause corresponds closely to section 261AD of the *Migration Act 1958*.

### 32 Use of force in carrying out identification tests

*When use of force is permitted*

- (1) Subject to subclause (2) and clause 33, an approved officer, or a person authorised under clause 34 to help the approved officer, may use reasonable force:
  - (a) to enable the identification test to be carried out; or
  - (b) to prevent the loss, destruction or contamination of any personal identifier or any meaningful identifier derived from the personal identifier.

However, this clause does not authorise the use of force against a minor or an incapable person, or if the personal identifier in question is a person's signature.

- (2) The approved officer or person must not use force unless:
  - (a) the non-citizen required to provide the personal identifier in question has refused to allow the identification test to be carried out; and
  - (b) all reasonable measures to carry out the identification test without the use of force have been exhausted; and
  - (c) the use of force in carrying out the identification test is authorised under subclause (4).

*Applications for authorisation to use force*

- (3) An approved officer may apply to a senior authorising officer (who is not an approved officer referred to in subclause (1)) for an authorisation to use force in carrying out the identification test.

*Authorisation to use force*

- (4) The senior authorising officer may authorise the use of force in carrying out the identification test if he or she is reasonably satisfied that:
  - (a) the non-citizen required to provide the personal identifier in question has refused to allow the identification test to be carried out; and
  - (b) all reasonable measures to carry out the identification test without the use of force have been exhausted.
- (5) An authorisation under subclause (4):

- (a) may be given by telephone, fax or other electronic means;  
and
  - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of an identification test carried out on the basis of that authorisation.
- (8) The power to give an authorisation under subclause (4) cannot be delegated to any other person.

*Definition*

- (9) In this clause:

***senior authorising officer*** means an authorised officer, or detention officer, whom the Secretary has authorised, or who is included in a class of authorised officers or detention officers whom the Secretary has authorised, to perform the functions of a senior authorising officer under this clause.

Note: This clause corresponds closely to section 261AE of the *Migration Act 1958*.

### **33 Identification tests not to be carried out in cruel, inhuman or degrading manner etc.**

For the purposes of this Schedule, the carrying out of the identification test is not of itself taken:

- (a) to be cruel, inhuman or degrading; or
- (b) to be a failure to treat a person with humanity and with respect for human dignity.

However, nothing in this Schedule authorises the carrying out of the identification test in a cruel, inhuman or degrading manner, or in a manner that fails to treat a person with humanity and with respect for human dignity.

Note: This clause corresponds closely to section 261AF of the *Migration Act 1958*.

### **34 Approved officer may get help to carry out identification tests**

An approved officer may ask another approved officer or an authorised officer or detention officer to help him or her to carry out the identification test, and the other person may give that help.

Note: This clause corresponds closely to section 261AG of the *Migration Act 1958*.

### **35 Identification tests to be carried out by approved officer of same sex as non-citizen**

If the non-citizen requests that the identification test be carried out by an approved officer of the same sex as the non-citizen, the test must only be carried out by an approved officer of the same sex as the non-citizen.

Note: This clause corresponds closely to section 261AH of the *Migration Act 1958*.

### **36 Independent person to be present**

The identification test must be carried out in the presence of an independent person if:

- (a) force is used in carrying out the identification test; or
- (b) both of the following apply:
  - (i) the non-citizen requests that an independent person be present while the identification test is being carried out;
  - (ii) an independent person is readily available at the same place as the non-citizen and is willing to attend the test within a reasonable time.

Note: This clause corresponds closely to section 261AI of the *Migration Act 1958*.

### **37 Recording of identification tests**

- (1) An approved officer may video record the carrying out of the identification test.
- (2) If the carrying out of the identification test is not video recorded, the approved officer may decide that the identification test must be carried out in the presence of an independent person.

Note: This clause corresponds closely to section 261AJ of the *Migration Act 1958*.

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### **38 Retesting**

*When retesting is permitted*

- (1) If:
- (a) an approved officer has carried out an identification test (the ***earlier test***) on a non-citizen in accordance with this Division (including a test authorised under subclause (4)); and
  - (b) either:
    - (i) a personal identifier that is provided as a result of the earlier test being carried out is unusable; or
    - (ii) an approved officer, authorised officer or detention officer is not satisfied about the integrity of that personal identifier;
- the approved officer who carried out the earlier test or another approved officer may require the non-citizen to provide the personal identifier again, and may carry out the test again in accordance with this Division, if:
- (c) the requirement is made while the earlier test is being carried out or immediately after it was carried out; or
  - (d) carrying out the test again is authorised under subclause (4).
- (2) If the non-citizen is required under subclause (1) to provide the personal identifier again, the non-citizen is taken, for the purposes of this Division, not to have provided the personal identifier as a result of the earlier test being carried out.

*Applications for authorisation to retest*

- (3) An approved officer may apply for an authorisation to carry out the test again. The application is to be made to:
- (a) if the earlier test was not a test authorised under subclause (4)—a senior authorising officer (who is not an approved officer, authorised officer or detention officer referred to in subclause (1)); or
  - (b) if the earlier test was a test authorised under subclause (4) by a senior authorising officer—the Secretary, the Director or an SES Band 3 employee in the Department (who is not an approved officer, authorised officer or detention officer referred to in subclause (1)).

*Authorisation to retest*

- (4) The senior authorising officer, Secretary, Director or SES Band 3 employee (as the case requires) may authorise the test to be carried out again if:
  - (a) he or she is reasonably satisfied that the personal identifier that is provided as a result of the earlier test being carried out is unusable; or
  - (b) he or she is not reasonably satisfied about the integrity of that personal identifier.
- (5) An authorisation under subclause (4):
  - (a) may be given by telephone, fax or other electronic means; and
  - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of an identification test carried out on the basis of that authorisation.
- (8) The power to give an authorisation under subclause (4) cannot be delegated to any other person.

*Use of force*

- (9) An authorisation under subclause (4) does not authorise the use of force in carrying out an identification test.

Note: See clause 32 on the use of force in carrying out identification tests.

*Effect of refusing to authorise retesting*

- (10) If an application for an authorisation to carry out an identification test again on a non-citizen is refused, the non-citizen is taken, for the purposes of this Schedule, to have complied with any requirement under this Schedule to provide the personal identifier in question.

*Definitions*

(11) In this clause:

**senior authorising officer** means an authorised officer, or detention officer, who:

- (a) has been authorised, or is included in a class of authorised officers or detention officers who have been authorised, by the Secretary to perform the functions of a senior authorising officer under this clause; and
- (b) is not the Secretary or an SES Band 3 employee in the Department.

**SES Band 3 employee** means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Note: This clause corresponds closely to section 261AK of the *Migration Act 1958*.

### **Subdivision C—Obligations relating to video recordings of identification tests**

#### **39 Definitions**

In this Subdivision, unless the contrary intention appears:

**permitted provision**, of a video recording, has the meaning given by subclause 42(2).

**provide**, in relation to a video recording, includes provide access to the recording.

**related document** means a document that contains information, derived from a video recording made under clause 37 or from a copy of such a recording, from which the identity of the individual on whom the identification test in question was carried out is apparent or can reasonably be ascertained.

**video recording** means a video recording made under clause 37 or a copy of such a recording, and includes a related document.

Note: This clause corresponds closely to section 261AKA of the *Migration Act 1958*.

#### 40 Accessing video recordings

- (1) A person commits an offence if:
- (a) the person accesses a video recording; and
  - (b) the person is not authorised under clause 41 to access the video recording for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years.

- (2) This clause does not apply if the access is through the provision of a video recording that is a permitted provision.

Note 1: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: This clause corresponds closely to section 261AKB of the *Migration Act 1958*.

#### 41 Authorising access to video recordings

- (1) The Secretary may, in writing, authorise a specified person, or any person included in a specified class of persons, to access:
- (a) all video recordings; or
  - (b) a specified video recording, or video recordings of a specified kind.
- (2) The Secretary must specify in an authorisation under this clause, as the purpose or purposes for which access is authorised, one or more of the following purposes:
- (a) providing a video recording to another person in accordance with this Subdivision;
  - (b) administering or managing the storage of video recordings;
  - (c) making a video recording available to the person to whom it relates;
  - (d) modifying related documents in order to correct errors or ensure compliance with appropriate standards;
  - (e) any purpose connected with determining whether a civil or criminal liability has arisen from a person carrying out or helping to carry out an identification test under this Schedule;
  - (f) complying with laws of the Commonwealth or the States or Territories;



- (g) disclosing personal information under clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, the Secretary must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of:
- (a) investigating an offence against a law of the Commonwealth or a State or Territory (other than an offence involving whether an identification test was carried out lawfully); or
  - (b) prosecuting a person for such an offence;
- if the identifying information in question relates to a personal identifier of a prescribed type.

Note: This clause corresponds closely to section 261AKC of the *Migration Act 1958*.

## 42 Providing video recordings

- (1) A person commits an offence if:
- (a) the person's conduct causes a video recording to be provided to another person; and
  - (b) the provision of the recording is not a permitted provision of the recording.

Penalty: Imprisonment for 2 years.

- (2) A ***permitted provision*** of a video recording is a provision of the recording that:
- (a) is for the purpose of administering or managing the storage of video recordings; or
  - (b) is for the purpose of making the video recording in question available to the non-citizen to whom it relates; or
  - (c) is for the purpose of a proceeding, before a court or tribunal, relating to the non-citizen to whom the video recording in question relates; or
  - (d) is for any purpose connected with determining whether a civil or criminal liability has arisen from a person carrying out or helping to carry out an identification test under this Schedule; or

- (e) is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to carrying out an identification test; or
  - (f) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of this Schedule relating to carrying out an identification test; or
  - (g) takes place with the written consent of the non-citizen to whom the video recording in question relates; or
  - (h) is a disclosure authorised by clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, a provision of a video recording is not a permitted provision of the recording if:
- (a) it constitutes a disclosure of identifying information relating to a personal identifier of a prescribed type; and
  - (b) it is for the purpose of:
    - (i) investigating an offence against a law of the Commonwealth or a State or Territory (other than an offence involving whether an identification test was carried out lawfully); or
    - (ii) prosecuting a person for such an offence.

Note: This clause corresponds closely to section 261AKD of the *Migration Act 1958*.

#### **43 Unauthorised modification of video recordings**

A person commits an offence if:

- (a) the person causes any unauthorised modification of a video recording; and
- (b) the person intends to cause the modification; and
- (c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years.

#### **44 Unauthorised impairment of video recordings**

A person commits an offence if:

- (a) the person causes any unauthorised impairment of:
  - (i) the reliability of a video recording; or

- (ii) the security of the storage of a video recording; or
- (iii) the operation of a system by which a video recording is stored; and
- (b) the person intends to cause the impairment; and
- (c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years.

#### **45 Meanings of *unauthorised modification* and *unauthorised impairment* etc.**

- (1) In this Subdivision:
  - (a) modification of a video recording; or
  - (b) impairment of the reliability of a video recording; or
  - (c) impairment of the security of the storage of a video recording; or
  - (d) impairment of the operation of a system by which a video recording is stored;by a person is unauthorised if the person is not entitled to cause that modification or impairment.
- (2) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.
- (3) For the purposes of an offence under this Subdivision, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.
- (4) For the purposes of subclause (1), if:
  - (a) a person causes any modification or impairment of a kind mentioned in that subclause; and
  - (b) the person does so under a warrant issued under the law of the Commonwealth, a State or a Territory;the person is entitled to cause that modification or impairment.

Note: This clause corresponds closely to section 261AKG of the *Migration Act 1958*.

#### **46 Destroying video recordings**

A person commits an offence if:

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- (a) the person is the person who has day-to-day responsibility for the system under which a video recording is stored; and
- (b) the person fails physically to destroy the recording, and all copies of the recording, within 10 years after it was made.

Penalty: Imprisonment for 2 years.

### **Division 3—Identification of minors and incapable persons**

#### **47 Minors**

*Minors less than 15 years old*

- (1) A non-citizen who is less than 15 years old must not be required under this Schedule to provide a personal identifier other than a personal identifier consisting of:
  - (a) a measurement of the non-citizen's height and weight; or
  - (b) the non-citizen's photograph or other image of the non-citizen's face and shoulders.

*Persons present while identification test is carried out*

- (2) If a non-citizen who is a minor provides a personal identifier, in accordance with a requirement under this Schedule, by way of an identification test carried out by an approved officer, the test must be carried out in the presence of:
  - (a) a parent or guardian of the minor; or
  - (b) an independent person.
- (3) However, if the Minister administering the *Immigration (Guardianship of Children) Act 1946* is the guardian of the minor, the test must be carried out in the presence of an independent person other than that Minister.

Note: This clause corresponds closely to subsections 261AL(1), (5) and (6) of the *Migration Act 1958*.

## **48 Incapable persons**

### *Incapable persons*

- (1) A non-citizen who is an incapable person must not be required under this Schedule to provide a personal identifier other than a personal identifier consisting of:
  - (a) a measurement of the non-citizen's height and weight; or
  - (b) the non-citizen's photograph or other image of the non-citizen's face and shoulders.

### *Persons present while identification test is carried out*

- (2) If a non-citizen who is an incapable person provides a personal identifier, in accordance with a requirement under this Schedule, by way of an identification test carried out by an approved officer, the test must be carried out in the presence of:
  - (a) a parent or guardian of the incapable person; or
  - (b) an independent person.

Note: This clause corresponds closely to subsections 261AM(1) and (4) of the *Migration Act 1958*.

## **Division 4—Obligations relating to detainees' identifying information**

### **Subdivision A—Preliminary**

#### **49 Definitions**

In this Division:

*disclose*, in relation to identifying information that is a personal identifier, includes provide access to the personal identifier.

*identifying information* means the following:

- (a) any personal identifier;
- (b) any meaningful identifier derived from any personal identifier;
- (c) any record of a result of analysing any personal identifier or any meaningful identifier derived from any personal identifier;

- (d) any other information, derived from any personal identifier, from any meaningful identifier derived from any personal identifier or from any record of a kind referred to in paragraph (c), that could be used to discover a particular person's identity or to get information about a particular person.

*permitted disclosure* has the meaning given by subclauses 53(2) and (3).

*unauthorised impairment* has the meaning given by clause 57.

*unauthorised modification* has the meaning given by clause 57.

Note: The definitions of expressions in this clause correspond closely to definitions of those expressions in section 336A of the *Migration Act 1958*.

## 50 Application

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to all offences against this Division.

Note: This clause corresponds closely to section 336B of the *Migration Act 1958*.

## Subdivision B—Accessing identifying information

### 51 Accessing identifying information

- (1) A person commits an offence if:
- (a) the person accesses identifying information; and
  - (b) the person is not authorised under clause 52 to access the identifying information for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years.

- (2) This clause does not apply if the access is through a disclosure that is a permitted disclosure.

Note 1: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: This clause corresponds closely to section 336C of the *Migration Act 1958*.

## **52 Authorising access to identifying information**

- (1) The Secretary may, in writing, authorise a specified person, or any person included in a specified class of persons, to access identifying information of the kind specified in the authorisation.
- (2) The Secretary must specify in an authorisation under this clause, as the purpose or purposes for which access is authorised, one or more of the following purposes:
  - (a) one or more of the purposes set out in subclause 26(3);
  - (b) disclosing identifying information in accordance with this Division;
  - (c) administering or managing the storage of identifying information;
  - (d) making identifying information available to the person to whom it relates;
  - (e) modifying identifying information to enable it to be matched with other identifying information;
  - (f) modifying identifying information in order to correct errors or ensure compliance with appropriate standards;
  - (g) making decisions under this Act;
  - (h) complying with laws of the Commonwealth or the States or Territories;
  - (i) disclosing personal information under clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, the Secretary must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of:
  - (a) investigating an offence against a law of the Commonwealth or a State or Territory; or
  - (b) prosecuting a person for such an offence;if the identifying information in question relates to a personal identifier of a prescribed type.

Note: This clause corresponds closely to section 336D of the *Migration Act 1958*.

## Subdivision C—Disclosing identifying information

### 53 Disclosing identifying information

- (1) A person commits an offence if:
- (a) the person's conduct causes disclosure of identifying information; and
  - (b) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 2 years.

- (2) A *permitted disclosure* is a disclosure that:
- (a) is for the purpose of data-matching in order to:
    - (i) identify, or authenticate the identity of, a non-citizen; or
    - (ii) facilitate the processing of non-citizens entering or departing from Australia; or
    - (iii) identify non-citizens who have a criminal history, who are of character concern (as defined in the *Migration Act 1958*) or who are of national security concern; or
    - (iv) combat document and identity fraud in immigration matters; or
    - (v) ascertain whether an applicant for a protection visa had sufficient opportunity to avail himself or herself of protection before arriving in Australia; or
    - (vi) inform the governments of foreign countries of the identity of non-citizens who are, or are to be, removed from Australia; or
  - (b) is for the purpose of administering or managing the storage of identifying information; or
  - (c) is authorised under clause 54 and is for the purpose, or one or more of the purposes, for which the disclosure is authorised; or
  - (d) is for the purpose of making the identifying information in question available to the non-citizen to whom it relates; or
  - (e) takes place under an arrangement entered into with an agency of the Commonwealth, or with a State or Territory or an agency of a State or Territory, for the exchange of identifying information; or



- (f) is for the purpose of a proceeding, before a court or tribunal, relating to the non-citizen to whom the identifying information in question relates; or
  - (g) is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to:
    - (i) carrying out an identification test; or
    - (ii) requiring the provision of a personal identifier; or
  - (h) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of this Schedule relating to:
    - (i) carrying out an identification test; or
    - (ii) requiring the provision of a personal identifier; or
  - (i) takes place with the written consent of the non-citizen to whom the identifying information in question relates; or
  - (j) is a disclosure authorised by clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, a disclosure is not a permitted disclosure if:
- (a) it is a disclosure of identifying information relating to a personal identifier of a prescribed type; and
  - (b) it is for the purpose of:
    - (i) investigating an offence against a law of the Commonwealth or a State or Territory; or
    - (ii) prosecuting a person for such an offence.

Note: This clause corresponds closely to section 336E of the *Migration Act 1958*.

#### **54 Authorising disclosure of identifying information to foreign countries etc.**

- (1) The Secretary may, in writing, authorise a specified authorised officer or detention officer, any authorised officer or detention officer included in a specified class of authorised officers or detention officers, or an Agency (as defined in the *Public Service Act 1999*) prescribed by the regulations, to disclose identifying information of the kind specified in the authorisation to one or more of the following:
- (a) one or more specified foreign countries;

- (b) one or more specified bodies each of which is:
    - (i) a police force or police service of a foreign country; or
    - (ii) a law enforcement body of a foreign country; or
    - (iii) a border control body of a foreign country;
  - (c) one or more specified international organisations, or specified organisations of foreign countries, that are responsible for matters relating to the environment;
  - (d) one or more prescribed bodies of a foreign country, of the Commonwealth or of a State or Territory;
  - (e) one or more prescribed international organisations.
- (2) The Secretary must specify in the authorisation, as the purpose or purposes for which disclosure is authorised, one or more of the purposes set out in subclause 26(3).

Note: This clause corresponds closely to subsections 336F(1) and (2) of the *Migration Act 1958*.

### **Subdivision D—Modifying and impairing identifying information**

#### **55 Unauthorised modification of identifying information**

A person commits an offence if:

- (a) the person causes any unauthorised modification of identifying information; and
- (b) the person intends to cause the modification; and
- (c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years.

Note: This clause corresponds closely to section 336G of the *Migration Act 1958*.

#### **56 Unauthorised impairment of identifying information**

A person commits an offence if:

- (a) the person causes any unauthorised impairment of:
  - (i) the reliability of identifying information; or
  - (ii) the security of the storage of identifying information; or
  - (iii) the operation of a system by which identifying information is stored; and

- (b) the person intends to cause the impairment; and
- (c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years.

Note: This clause corresponds closely to section 336H of the *Migration Act 1958*.

### **57 Meanings of *unauthorised modification* and *unauthorised impairment* etc.**

- (1) In this Division:
  - (a) modification of identifying information; or
  - (b) impairment of the reliability of identifying information; or
  - (c) impairment of the security of the storage of identifying information; or
  - (d) impairment of the operation of a system by which identifying information is stored;by a person is unauthorised if the person is not entitled to cause that modification or impairment.
- (2) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.
- (3) For the purposes of an offence under this Division, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.
- (4) For the purposes of subclause (1), if:
  - (a) a person causes any modification or impairment of a kind mentioned in that subclause; and
  - (b) the person does so under a warrant issued under the law of the Commonwealth, a State or a Territory;the person is entitled to cause that modification or impairment.

Note: This clause corresponds closely to section 336J of the *Migration Act 1958*.

### **Subdivision E—Retaining identifying information**

#### **58 Identifying information may be indefinitely retained**

Identifying information may be indefinitely retained.

Note: This clause corresponds closely to paragraph 336L(1)(a) of the *Migration Act 1958*, because under this Schedule identifying information will always be about someone who is or has been in detention.

## Part 6—Disclosure of detainees’ personal information

### 59 Disclosure of detainees’ personal information

- (1) For the purposes described in subclause (2), an agency or organisation that is or has been responsible for the detention of an individual may disclose personal information about the individual to an agency, or organisation, that is or will be responsible for:
- (a) taking the individual into immigration detention; or
  - (b) keeping the individual in immigration detention; or
  - (c) causing the individual to be kept in immigration detention; or
  - (d) the removal of the individual.

- (2) The purposes are:
- (a) the immigration detention of the individual; and
  - (b) the removal of the individual; and
  - (c) the welfare of the individual while in immigration detention or being removed.

- (3) In this clause:

**agency** has the same meaning as in the *Privacy Act 1988*.

**immigration detention** has the same meaning as in the *Migration Act 1958*.

**organisation** has the same meaning as in the *Privacy Act 1988*.

**personal information** has the same meaning as in the *Privacy Act 1988*.

**removal** has the same meaning as in the *Migration Act 1958*.

## **Part 2—Amendment of other Acts**

### *Australian Heritage Council Act 2003*

#### **836 Subsection 3(1) (definition of *Register*)**

Repeal the definition.

#### **837 After paragraph 5(c)**

Insert:

- (ca) to advise the Minister, in accordance with section 390P of the *Environment Protection and Biodiversity Conservation Act 1999*, in relation to the inclusion of places in, and the removal of places from, the List of Overseas Places of Historic Significance to Australia;

#### **838 Paragraph 5(f)**

Repeal the paragraph.

#### **839 At the end of Part 4**

Add:

#### **20A Resolutions without meeting**

- (1) The Council may pass a resolution without a Council meeting being held if a majority of the members entitled to vote on the resolution:
  - (a) sign a document containing a statement that they are in favour of the resolution set out in the document; or
  - (b) otherwise indicate, in accordance with a method determined by the Council, that they are in favour of the resolution.
- (2) For the purposes of paragraph (1)(a), separate copies of a document may be used for signing by the members if the wording of the resolution and statement is identical in each copy.
- (3) The resolution is passed when the last of the members signs the document or otherwise indicates that he or she is in favour of the resolution.

**840 At the end of Part 5**

Add:

**24AA No further changes to Register**

The Council must not:

- (a) include a place in the Register; or
- (b) remove a place, part of a place or heritage value of a place from the Register;

on or after the commencement of this section.

**841 Part 5**

Repeal the Part.

**842 Paragraph 24A(2)(c)**

Omit “, Commonwealth Heritage List or Register of the National Estate”, substitute “or Commonwealth Heritage List”.

**843 Paragraph 24A(2)(d)**

Omit “, Commonwealth Heritage List or Register of the National Estate”, substitute “or Commonwealth Heritage List”.

**844 Paragraph 24A(2)(g)**

Omit “, Commonwealth Heritage List or Register of the National Estate”, substitute “or Commonwealth Heritage List”.

**845 Paragraph 24A(2)(h)**

Omit “, Commonwealth Heritage List or Register of the National Estate”, substitute “or Commonwealth Heritage List”.

***Environment and Heritage Legislation Amendment Act  
(No. 1) 2003***

**846 Subitem 1A(2) of Schedule 3 (heading)**

Omit “within 6 months”.

**847 Subitem 1A(2) of Schedule 3**

Omit “within 6 months after this item commences”.

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

**848 Subsection 3(1) (subparagraph (b)(iii) of the definition of *prescribed instrument*)**

Omit “1976; and”, substitute “1976.”.

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

Repeal the subparagraph.

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

**850 Section 3 (subparagraph (b)(iii) of the definition of *prescribed instrument*)**

Omit “1976; and”, substitute “1976.”.

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

Repeal the subparagraph.

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

**852 Subsection 4(1) (definition of *Protocol*)**

Repeal the definition, substitute:

***Protocol*** means the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, done at London on 7 July 1996, as amended and in force for Australia from time to time.

Note: The English text of the Protocol is set out in Australian Treaty Series 2006 No. 11. In 2006, the text of a Protocol in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII Internet site ([www.austlii.edu.au](http://www.austlii.edu.au)).

**853 Schedule 1**

Repeal the Schedule.

***Migration Act 1958***

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**854 Subsection 5(1)**

Insert:

*environment detention offence* means:

- (a) an offence against the *Environment Protection and Biodiversity Conservation Act 1999*, or against regulations made for the purposes of that Act; or
- (b) an offence against section 6 of the *Crimes Act 1914* relating to an offence described in paragraph (a).

**855 Subsection 5(1)**

Insert:

*environment officer* means an authorised officer, within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*, but does not include a person who is an authorised officer because of subsection 397(3) of that Act.

**856 Subsection 5(1)**

Insert:

*foreign aircraft (environment matters)* means an aircraft, within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*, that is not an Australian aircraft (within the meaning of that Act).

**857 Subsection 5(1)**

Insert:

*vessel (environment matters)* means a vessel, within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*.

**858 At the end of subsection 43(3)**

Add:

- ; or (c) an Australian resident entering Australia on a vessel (environment matters) as a result of an environment officer, or the person in command of a Commonwealth ship or a Commonwealth aircraft:



- (i) exercising his or her power under paragraph 403(3)(a) of the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the vessel; or
  - (ii) making a requirement of the person in charge of the vessel under paragraph 403(3)(b) of the *Environment Protection and Biodiversity Conservation Act 1999*;
- because the environment officer, or person in command, had reasonable grounds to suspect that the vessel had been used or otherwise involved in the commission of an environment detention offence.

**859 Subsection 43(4)**

Insert:

*Commonwealth aircraft* has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**860 Subsection 43(4)**

Insert:

*Commonwealth ship* has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**861 Section 164A**

Insert:

*Commonwealth aircraft* has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**862 Section 164A**

Insert:

*Commonwealth ship* has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**863 Section 164A**

Insert:

*enforcement visa (environment matters)* means an enforcement visa that is granted by section 164BA.

**864 Section 164A**

Insert:

*enforcement visa (fisheries matters)* means an enforcement visa that is granted by section 164B.

### 865 Section 164A

Insert:

*environment detention* means detention under Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*.

Note: The heading to section 164B is altered by adding at the end “(fisheries matters)”.

### 866 After section 164B

Insert:

#### 164BA Grant of enforcement visas (environment matters)

*Non-citizen on vessel (environment matters) outside migration zone*

- (1) A non-citizen on a vessel (environment matters) outside the migration zone is granted an enforcement visa when, because an environment officer, or the person in command of a Commonwealth ship or a Commonwealth aircraft, has reasonable grounds to suspect that the vessel has been used or otherwise involved in the commission of an environment detention offence, the environment officer or person in command:
- (a) exercises his or her power under paragraph 403(3)(a) of the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the vessel; or
  - (b) makes a requirement of the person in charge of the vessel under paragraph 403(3)(b) of the *Environment Protection and Biodiversity Conservation Act 1999*;
- whichever occurs first.

Note 1: Under paragraph 403(3)(a) of the *Environment Protection and Biodiversity Conservation Act 1999*, an environment officer, or the person in command of a Commonwealth ship or a Commonwealth aircraft, may bring a vessel into the migration zone. Under paragraph 403(3)(b) of that Act, an environment officer, or the person in command of a Commonwealth ship or a Commonwealth aircraft, may require the person in charge of a vessel to bring the vessel into the migration zone.

Note 2: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

*Non-citizen in migration zone*

- (2) A non-citizen in the migration zone who does not already hold an enforcement visa is granted an enforcement visa when he or she is detained by an environment officer under Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*.

Note: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

*Non-citizen in prescribed circumstances*

- (3) An enforcement visa is granted to a non-citizen (who does not already hold an enforcement visa) when an environment officer exercises under the *Environment Protection and Biodiversity Conservation Act 1999* a prescribed power in prescribed circumstances in relation to the non-citizen. The visa is granted at the time the power is exercised.

Note: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

*Non-citizen on vessel or aircraft in prescribed circumstances*

- (4) An enforcement visa is granted to a non-citizen (who does not already hold an enforcement visa) who was on a vessel (environment matters) or a foreign aircraft (environment matters) when an environment officer exercises under the *Environment Protection and Biodiversity Conservation Act 1999* a prescribed power in prescribed circumstances in relation to the vessel or aircraft. The visa is granted at the time the power is exercised.

Note: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

*Enforcement visas granted by force of this section*

- (5) To avoid doubt, an enforcement visa is granted by force of this section.

Note: No administrative action under this Act is necessary to grant the visa.

*Exception if Minister's declaration in force*

- (6) Despite subsections (1), (2), (3) and (4), a non-citizen is not granted an enforcement visa if a declaration under subsection (7) is in force in relation to:
- (a) the non-citizen; or
  - (b) a class of persons of which the non-citizen is a member.

*Declaration*

- (7) The Minister may make a written declaration, for the purposes of this section, that it is undesirable that a person, or any persons in a class of persons, travel to and enter Australia or remain in Australia.

*Section does not apply to Australian residents*

- (8) This section does not apply to non-citizens who are Australian residents as defined in Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*.

**867 Subsection 164C(1)**

After “enforcement visa”, insert “(fisheries matters)”.

Note: The heading to subsection 164C(1) is replaced by the heading “*Enforcement visa (fisheries matters)—non-citizen in fisheries detention*”.

**868 Subsection 164C(2)**

After “enforcement visa”, insert “(fisheries matters)”.

Note: The heading to subsection 164C(2) is replaced by the heading “*Enforcement visa (fisheries matters)—non-citizen not in fisheries detention*”.

**869 At the end of section 164C**

Add:

*Enforcement visa (environment matters)—non-citizen in environment detention*

- (3) The enforcement visa (environment matters) of a non-citizen who is in environment detention ceases to be in effect:
- (a) at the time the non-citizen is released, or escapes, from environment detention; or

- (b) at the time the Minister makes a declaration under subsection 164BA(7) in relation to the non-citizen, or a class of persons of which the non-citizen is a member; or
  - (c) on the occurrence of a prescribed event;
- whichever occurs first.

*Enforcement visa (environment matters)—non-citizen not in environment detention*

- (4) The enforcement visa (environment matters) of a non-citizen who is not in environment detention ceases to be in effect:
  - (a) at the time a decision is made not to charge the non-citizen with an environment detention offence; or
  - (b) at the time the Minister makes a declaration under subsection 164BA(7) in relation to the non-citizen, or a class of persons of which the non-citizen is a member; or
  - (c) on the occurrence of a prescribed event;whichever occurs first.

## Schedule 2—Application, saving and transitional provisions

### Part 1—Preliminary

#### 1 Definitions

In this Schedule:

*amending Schedule* means Schedule 1 to this Act.

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

## **Part 2—Provisions relating to assessments and approvals**

### **Division 1—Main provisions**

#### **2 Definitions**

In this Division:

*amended EPBC Act* means the EPBC Act as in force after the commencement time.

*commencement time* means the commencement of item 185 of the amending Schedule.

*old EPBC Act* means the EPBC Act as in force before the commencement time.

#### **3 Actions referred under Division 1 of Part 7 before the commencement time—general**

- (1) This item applies in relation to a proposal by a person to take an action that was referred to the Minister under Division 1 of Part 7 of the EPBC Act before the commencement time, but only if the Minister had not, before that time, decided under section 133 of the EPBC Act to approve or refuse to approve the taking of the action.
- (2) The amendments of Parts 7 and 8 and Division 1 of Part 9 of the EPBC Act made by the following items of the amending Schedule apply in relation to the action:
  - (a) item 178;
  - (b) item 179;
  - (c) item 188;
  - (d) item 189;
  - (e) item 194;
  - (f) item 201;
  - (g) item 202;
  - (h) item 255;
  - (i) item 256;
  - (j) item 257;
  - (k) item 258;

- (l) item 260;
  - (m) item 261;
  - (n) item 264;
  - (o) item 265;
  - (p) item 266;
  - (q) item 267;
  - (r) item 268;
  - (s) item 269;
  - (t) item 270;
  - (u) item 271;
  - (v) item 272;
  - (w) item 273;
  - (x) item 274;
  - (y) item 275;
  - (z) item 276;
  - (za) item 277;
  - (zb) item 285.
- (3) Subject to item 4:
- (a) the other amendments of Part 7 (other than the amendments of that Part made by items 172 and 173), Part 8 and Division 1 of Part 9 of the EPBC Act made by the amending Schedule; and
  - (b) the amendments of section 170A of the EPBC Act made by the amending Schedule;
- do not apply in relation to the action.
- (4) The amendments of Parts 9 and 11 (other than amendments to which subitem (2) or (3) applies) of the EPBC Act made by the amending Schedule apply in relation to the action.

**4 Minister may determine that particular amendments of the EPBC Act are to apply to an action referred under Division 1 of Part 7 before the commencement time**

- (1) This item applies in relation to a proposal by a person to take an action that was referred to the Minister under Division 1 of Part 7 of the EPBC Act before the commencement time, but only if the Minister had not,



before that time, decided under section 87 of the EPBC Act on the approach to be used for assessment of the relevant impacts of the action.

- (2) The Minister may determine, in writing, that some or all of the amendments of the EPBC Act to which subitem 3(3) applies are to apply in relation to a particular action to which this item applies, subject to such modifications of Part 7 and Division 3 of Part 8 of the EPBC Act as are specified in the determination. However, the determination must not:
  - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.
- (3) Before making a determination under subitem (2) in relation to a particular action, the Minister (the *Environment Minister*) must inform the following persons that the Environment Minister proposes to make the determination:
  - (a) the person proposing to take the action;
  - (b) the designated proponent of the action (if a person has been designated as proponent of the action and the person is not the person proposing to take the action);
  - (c) if the action is to be taken in a State or self-governing Territory and the Environment Minister thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 of the amended EPBC Act (about matters of national environmental significance)—the appropriate Minister of the State or Territory.
- (4) A determination made under subitem (2) is a legislative instrument, but section 42 of the *Legislative Instruments Act 2003* does not apply to the determination.
- (5) In this item:  
*modifications* includes omissions, additions and substitutions.

## **5 Proposals to authorise actions referred under section 161 before the commencement time—assessment approach decision made**

- (1) This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if:
  - (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and
  - (b) before that time, the Minister:
    - (i) had decided under section 87 of the EPBC Act (as applied by section 162 of that Act) on the approach to be used for assessment of the impact that the action has, will have, or is likely to have on the environment; but
    - (ii) had not given advice about the proposal to give the authorisation of the action under section 163 of the EPBC Act.
- (2) The amendments of Part 8, Subdivision A of Division 4 of Part 11 and section 170A of the EPBC Act made by the amending Schedule do not apply in relation to the action.

**6 Proposals to authorise actions referred under section 161 before the commencement time—assessment approach decision not made**

- (1) This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if:
  - (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and
  - (b) the Minister had not, before that time, decided under section 87 of the EPBC Act (as applied by section 162 of that Act) on the approach to be used for assessment of the impact that the action has, will have, or is likely to have on the environment.
- (2) The amendments of Part 8, Subdivision A of Division 4 of Part 11 and section 170A of the EPBC Act made by the amending Schedule apply in relation to the action.

## **7 Actions to which an agreement made under section 167 before the commencement time relates**

- (1) This item applies in relation to an action that is the subject of an agreement that was made under section 167 of the EPBC Act before the commencement time.
- (2) The amendments of Part 8, Division 1 of Part 10, Subdivision C of Division 4 of Part 11 and section 170A of the EPBC Act made by the amending Schedule do not apply in relation to the action or the agreement.

## **8 Saving regulations**

- (1) Regulations made for the purposes of paragraph 93(1)(a) of the old EPBC Act continue in force after the commencement time as if they had been made for the purposes of subsections 95(2) and 95A(3) of the amended EPBC Act.
- (2) Regulations made for the purposes of subsection 99(4) of the old EPBC Act continue in force after the commencement time as if they had been made for the purposes of subsection 99(4) of the amended EPBC Act.
- (3) Regulations made for the purposes of subsection 104(4) of the old EPBC Act continue in force after the commencement time as if they had been made for the purposes of subsection 104(4) of the amended EPBC Act.
- (4) Subitems (1), (2) and (3) do not prevent amendment or repeal of the regulations referred to in those subitems.

## **Division 2—Other provisions**

### **9 Application of amendments made by items 68 etc.**

The amendments made by items 68, 84, 172, 173, 783 and 814 of the amending Schedule apply to actions taken after the commencement of those items.

### **10 Application of amendments made by items 123 etc.**

The amendments made by items 123, 124, 125, 126, 127, 128, 129, 130, 809 and 831 of the amending Schedule apply to actions taken after the commencement of those items.

### **11 Application of amendments made by items 109 and 110**

The amendments made by items 109 and 110 of the amending Schedule apply in relation to a management arrangement or an authorisation process that is laid before each House of the Parliament under section 33 of the EPBC Act after the commencement of those items.

### **12 Application of amendments made by items 144 and 145**

The amendments made by items 144 and 145 of the amending Schedule apply in relation to a management arrangement or an authorisation process that is laid before each House of the Parliament under section 46 of the EPBC Act after the commencement of those items.

### **13 Saving of accredited management plans**

- (1) If, immediately before the commencement of item 93 of the amending Schedule, a management plan is an accredited management plan under section 33 of the EPBC Act for the purposes of a declaration under that section, then, immediately after the commencement of that item, the accredited management plan is taken to be an accredited management arrangement for the purposes of the EPBC Act as in force after the commencement of that item.
- (2) If, immediately before the commencement of item 131 of the amending Schedule, a management plan is a bilaterally accredited management plan under section 46 of the EPBC Act for the purposes of a bilateral agreement under section 45 of that Act, then, after the commencement of that item, the bilaterally accredited management plan is taken to be a bilaterally accredited management arrangement for the purposes of the EPBC Act as in force after the commencement of that item.

## **Part 3—Provisions relating to recovery plans and conservation advice**

### **14 Definitions**

In this Part:

*amended EPBC Act* means the EPBC Act as in force after the commencement time.

*commencement time* means the commencement of item 471 of the amending Schedule.

*Scientific Committee* has the same meaning as in the EPBC Act.

### **15 Listed species or communities for which there are already recovery plans**

- (1) This item applies in relation to each species and ecological community in relation to which the following paragraphs were satisfied immediately before the commencement time:
  - (a) the species or community was a listed threatened species or a listed threatened ecological community;
  - (b) a recovery plan for the species or community had been made and was in force, or had been made but had not yet come into force.
- (2) The amended EPBC Act applies in relation to the species or community as if the recovery plan had been made:
  - (a) immediately after the commencement time under section 269A of the amended EPBC Act; and
  - (b) pursuant to a decision of the Minister under subsection 269AA(1) of the amended EPBC Act to have a recovery plan for the species or community.
- (3) In making a subsequent recovery plan decision, within the meaning of section 269AA of the amended EPBC Act, in relation to the species or community, paragraph 269AA(4)(a) does not apply.
- (4) Section 266B of the amended EPBC Act does not apply in relation to the species or community unless and until:

- (a) the Minister decides, as mentioned in subsection 269AA(5) of the amended EPBC Act, not to have a recovery plan for the species or community; and
  - (b) the Scientific Committee gives the Minister information or a statement as required by subitem (5).
- (5) If the Minister makes a decision as mentioned in paragraph (4)(a) in relation to the species or community, the Scientific Committee must, within 30 days, give the Minister information or a statement of the kind referred to in paragraph 189(1B)(b) of the amended EPBC Act.

## 16 Listed species or communities for which there are not already recovery plans

### *Scientific Committee to give the Minister 2 lists*

- (1) Within 6 months after the commencement time, the Scientific Committee must prepare and give to the Minister:
- (a) a written list (the ***Recovery Planning Action Commenced List***) of all the species or communities in relation to which the following subparagraphs were satisfied immediately before the commencement time:
    - (i) the species or community was a listed threatened species or a listed threatened ecological community;
    - (ii) a recovery plan for the species or community had not yet been made;
    - (iii) work on the development of a recovery plan for the species or community had started; and
  - (b) a written list (the ***Recovery Planning Action Not Commenced List***) of all the species or communities in relation to which the following subparagraphs were satisfied immediately before the commencement time:
    - (i) the species or community was a listed threatened species or a listed threatened ecological community;
    - (ii) a recovery plan for the species or community had not yet been made;
    - (iii) work on the development of a recovery plan for the species or community had not yet started.

*Recovery Planning Action Not Commenced List to specify time for provision of material to Minister*

- (2) The Recovery Planning Action Not Commenced List must specify, for each species or community in the list, the time (the **compliance time**) by which the Scientific Committee will give the Minister material of the kind referred to in paragraphs 189(1B)(b) and (c) of the amended EPBC Act.
- (3) The Minister may, in writing, direct the Scientific Committee to make a particular change to the compliance time specified in the Recovery Planning Action Not Commenced List in relation to a particular species or community. The Scientific Committee must comply with the direction.

*Lists etc. are not legislative instruments*

- (4) None of the following are legislative instruments:
  - (a) the Recovery Planning Action Commenced List;
  - (b) the Recovery Planning Action Not Commenced List;
  - (c) a direction under subitem (3).
- (5) The Minister must publish the Recovery Planning Action Commenced List and the Recovery Planning Action Not Commenced List on the Internet.

**17 Species or communities in the Recovery Planning Action Commenced List**

- (1) This item applies in relation to each species and ecological community included in the Recovery Planning Action Commenced List.
- (2) The amended EPBC Act applies in relation to the species or community as if the Minister had, immediately after the commencement time, decided under subsection 269AA(1) of the amended EPBC Act to have a recovery plan for the species or community.
- (3) In making a subsequent recovery plan decision, within the meaning of section 269AA of the amended EPBC Act, in relation to the species or community, paragraph 269AA(4)(a) does not apply.
- (4) Section 266B of the amended EPBC Act does not apply in relation to the species or community unless and until:

- (a) the Minister decides, as mentioned in subsection 269AA(5) of the amended EPBC Act, not to have a recovery plan for the species or community; and
  - (b) the Scientific Committee gives the Minister information or a statement as required by subitem (5).
- (5) If the Minister makes a decision as mentioned in paragraph (4)(a) in relation to the species or community, the Scientific Committee must, within 30 days, give the Minister information or a statement of the kind referred to in paragraph 189(1B)(b) of the amended EPBC Act.

**18 Species or communities in the Recovery Planning Action Not Commenced List**

- (1) This item applies in relation to each species and ecological community included in the Recovery Planning Action Not Commenced List.
- (2) The Scientific Committee must give the Minister material referred to in paragraphs 189(1B)(b) and (c) of the amended EPBC Act in relation to the species or community. The material must be give to the Minister by the compliance time specified in the List for the species or community.
- (3) Section 266B of the amended EPBC Act does not apply in relation to the species or community until the Scientific Committee gives the Minister the material required by subitem (2) in relation to the species or community.
- (4) Subsection 269AA(1) of the amended EPBC Act applies in relation to the species or community as if the reference to 90 days after the species or community becomes listed were instead a reference to 90 days after the Scientific Committee gives the Minister the material required by subitem (2) in relation to the species or community.



## **Part 4—Provisions relating to fisheries**

### **19 Application of amendment made by item 1**

The amendment made by item 1 of the amending Schedule applies to fishing activities engaged in after the commencement of that item (whether the relevant plan of management is in force under the *Fisheries Management Act 1991* before or after that commencement).

### **20 Application of amendments made by items 315 and 316**

The amendments made by items 315 and 316 of the amending Schedule apply to agreements made under section 146 of the EPBC Act after the commencement of those items.

### **21 Application of amendment made by item 319**

The amendment made by item 319 of the amending Schedule applies to an agreement between Ministers of the kind referred to in subsection 152(1) of the EPBC Act that is made after the commencement of that item.

### **22 Application of amendment made by item 320**

The amendment made by item 320 of the amending Schedule applies to agreements made under section 146 of the EPBC Act after the commencement of that item.

### **23 Application of amendments made by items 391 etc.**

- (1) The amendments made by items 391, 416, 449 and 466 of the amending Schedule apply to any plan, regime or policy accredited under section 208A, 222A, 245 or 265 of the EPBC Act after the commencement of those items.
- (2) The amendments made by items 391, 416, 449 and 466 of the amending Schedule do not affect the continuity of any accreditation, under section 208A, 222A, 245 or 265 of the EPBC Act, of a plan or regime that occurs before the commencement of those items.

**24 Application of amendment made by item 487**

The amendment made by item 487 of the amending Schedule applies to any plan, regime or policy, whether the plan, regime or policy was accredited under section 208A, 222A, 245 or 265 of the EPBC Act before or after the commencement of that item.

## **Part 5—Other provisions relating to protected species**

### **25 Application of amendments made by items 181 etc.**

The amendments made by items 181, 382, 385, 411, 412, 437, 444, 461, 462 and 467 of the amending Schedule apply in relation to applications made after the commencement of those items.

### **26 Continued application of Subdivision B of Division 4 of Part 11**

Despite the repeal of Subdivision B of Division 4 of Part 11 of the EPBC Act by item 330 of the amending Schedule, that Subdivision continues to apply in relation to an application for a permit under Division 3 of Part 13 of the EPBC Act that was made before the commencement of that item.

### **27 Inventories prepared under section 172**

- (1) This item applies to inventories that were prepared under section 172 of the EPBC Act as in force immediately before the commencement of item 349 of the amending Schedule.
- (2) The inventories have effect, after the commencement of that item, as if they had been prepared under section 172 of the EPBC Act as amended by that item.

### **28 Surveys prepared under section 173**

- (1) This item applies to surveys that were prepared under section 173 of the EPBC Act as in force immediately before the commencement of item 350 of the amending Schedule.
- (2) The surveys have effect, after the commencement of that item, as if they had been prepared under section 173 of the EPBC Act as amended by that item.

### **29 Application of amendments made by items 417 etc.**

The amendments made by items 417, 418, 423, 424, 425, 426, 428, 434, 439, 441, 811, 812, 816 and 833 of the amending Schedule apply in relation to actions (however described) taken after the commencement of those items.

### **30 Application of amendment made by item 420**

The amendment made by item 420 of the amending Schedule applies in relation to actions (however described) taken after the commencement of that item.

### **31 Application of amendments made by items 429 and 440**

- (1) The amendment made by item 429 of the amending Schedule applies in relation to actions (however described) taken after the commencement of that item.
- (2) The amendment made by item 440 of the amending Schedule applies in relation to an application for a permit under section 237 of the EPBC Act that is made after the commencement of that item.

### **32 Application of amendments made by items 430 and 431**

The amendments made by items 430 and 431 of the amending Schedule apply in relation to actions taken after the commencement of those items.

### **33 Application of amendments made by items 435 and 445**

- (1) The amendment made by item 435 of the amending Schedule applies in relation to a vessel brought into a port after the commencement of that item.
- (2) The amendment made by item 445 of the amending Schedule applies in relation to an application for a permit under section 237 of the EPBC Act that is made after the commencement of that item.

### **34 Saving regulations**

- (1) Regulations in force, before the commencement of item 440 of the amending Schedule, for the purposes of paragraph 238(3)(c) of the EPBC Act continue in force after that commencement as if they had

been made for the purposes of that paragraph of that Act as amended by that item.

- (2) Subitem (1) does not prevent amendment or repeal of the regulations referred to in that subitem.

## **Part 6—Provisions related to wildlife trade**

### **35 Application of amendments made by items 488 etc.**

The amendments made by items 488, 489, 496, 499, 500, 503, 509, 510, 511, 514, 515, 516, 517, 518, 519, 520, 521, 523, 524, 525 and 527 of the amending Schedule apply to permits granted after the commencement of those items.

### **36 Application of amendments made by items 506 etc.**

The amendments made by items 506, 507, 508 and 522 of the amending Schedule apply to assessments started after the commencement of those items.

## **Part 7—Provisions related to listing processes**

### **37 Definitions**

In this Part:

***amended EPBC Act:***

- (a) when used in item 38—means the EPBC Act as in force after the species commencement time; and
- (b) when used in the other items of this Part—means the EPBC Act as in force after the heritage commencement time.

***heritage commencement time*** means the commencement of item 550 of the amending Schedule.

***old EPBC Act:***

- (a) when used in item 38—means the EPBC Act as in force before the species commencement time; and
- (b) when used in the other items of this Part—means the EPBC Act as in force before the heritage commencement time.

***species commencement time*** means the commencement of item 368 of the amending Schedule.

### **38 Section 191 nominations made before the species commencement time**

- (1) This item applies if, before the species commencement time:
  - (a) an item had been nominated under section 191 of the old EPBC Act for inclusion in a list referred to in section 178, 181 or 183 of the old EPBC Act; and
  - (b) the Minister had not decided whether to include the item in the list.
- (2) The nomination is taken to have been made, for the purposes of the amended EPBC Act, in response to the invitation under section 194E of the amended EPBC Act in relation to the first assessment period for the list.
- (3) The regulations referred to in paragraphs 194E(3)(b) and (c) of the amended EPBC Act are taken to have been complied with in relation to the nomination.

**Schedule 2** Application, saving and transitional provisions

**Part 7** Provisions related to listing processes

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Note: For the item to have been nominated under section 191 of the old EPBC Act, the nomination must have been made in accordance with the regulations made for the purposes of that section.

- (4) If, before the species commencement time, the nomination had been forwarded to the Scientific Committee under section 191 of the old EPBC Act, the Minister is taken, for the purposes of section 194F of the amended EPBC Act, to have given the nomination to the Scientific Committee in relation to the first assessment period for the list.

Note 1: If under this subitem the Minister is taken, for the purposes of section 194F of the amended EPBC Act, to have given the nomination to the Scientific Committee, the Committee must then decide whether to include the item on the proposed priority assessment list for the first assessment period (see section 194G of the amended EPBC Act).

Note 2: If the nomination had not been forwarded to the Scientific Committee before the species commencement time, section 194F of the amended EPBC Act requires the Minister to give the nomination to the Scientific Committee together with the other nominations in relation to the first assessment period.

- (5) The Minister, and the Scientific Committee, may take into account, in dealing with the nomination, any information that was obtained in relation to the nomination under the old EPBC Act.

- (6) If the Minister determines, in writing, that this subitem applies in relation to the nomination of the item, then, in relation to that nomination of the item:

- (a) the Scientific Committee is taken to have complied with section 194M of the amended EPBC Act; and
- (b) paragraph 194N(2)(a) and subsection 194N(3) of the amended EPBC Act do not apply.

- (7) If:

- (a) the Scientific Committee had, before the species commencement time, given the Minister advice about the nomination in accordance with section 189 of the old EPBC Act; and
- (b) the Minister determines, in writing, that this subitem applies to the nomination of the item for the first assessment period;

then that advice is taken, for the purposes of the amended EPBC Act, to be an assessment given by the Committee to the Minister:

- (c) in accordance with subsection 194N(1) of the amended EPBC Act in relation to the nomination of the item for the first assessment period; and



(d) on the day the Minister makes the determination referred to in paragraph (b).

(8) A determination under subitem (6) or (7) is not a legislative instrument.

### **39 Section 324E nominations made before the heritage commencement time**

(1) This item applies if, before the heritage commencement time:

- (a) a place had been nominated under section 324E of the old EPBC Act; and
- (b) the place is within the Australian jurisdiction; and
- (c) the Minister had not decided whether to include the place in the National Heritage List.

(2) The nomination is taken to have been made, for the purposes of the amended EPBC Act, in response to the invitation under section 324J of the amended EPBC Act in relation to the first assessment period for the National Heritage List.

(3) The regulations referred to in paragraph 324J(3)(b) and (c) of the amended EPBC Act are taken to have been complied with in relation to the nomination.

Note: For a place to have been nominated under section 324E of the old EPBC Act, the nomination must have been made in accordance with the regulations made for the purposes of that section.

(4) If, before the heritage commencement time, the Minister had requested the Australian Heritage Council to assess the place, the Minister is taken, for the purposes of section 324JA of the amended EPBC Act, to have given the nomination to the Australian Heritage Council in relation to the first assessment period for the National Heritage List.

Note 1: If under this subitem the Minister is taken, for the purposes of section 324JA of the amended EPBC Act, to have given the nomination to the Australian Heritage Council, the Council must then decide whether to include the place on the proposed priority assessment list for the first assessment period (see section 324JB of the amended EPBC Act).

Note 2: If, before the heritage commencement time, the Minister had not requested the Australian Heritage Council to assess the place, section 324JA of the amended EPBC Act requires the Minister to give the nomination to the Australian Heritage Council together with the other nominations in relation to the first assessment period.

- (5) The Minister, and the Australian Heritage Council, may take into account, in dealing with the nomination, any information that was obtained in relation to the nomination under the old EPBC Act.
- (6) If:
- (a) the Australian Heritage Council had, before the heritage commencement time, complied with subsection 324G(3A) of the old EPBC Act in relation to the assessment of the place; and
  - (b) the Minister determines, in writing, that this subitem applies to the nomination of the place for the first assessment period;
- then, in relation to that nomination of the place:
- (c) the Australian Heritage Council is taken to have complied with section 324JG of the amended EPBC Act; and
  - (d) references in the amended EPBC Act to the notice under subsection 324JG(1) are taken to be references to the notice (the *old EPBC Act notice*) published by the Council when complying with subsection 324G(3A) of the old EPBC Act in relation to the assessment of the place; and
  - (e) regulations (if any) referred to in paragraph 324JG(4)(b) of the amended EPBC Act do not apply to comments received by the Council in response to the old EPBC Act notice.
- (7) If:
- (a) the Australian Heritage Council had, before the heritage commencement time, complied with subsection 324G(4) of the old EPBC Act in relation to the assessment of the place; and
  - (b) the Minister determines, in writing, that this subitem applies to the nomination of the place for the first assessment period;
- then, in relation to that nomination of the place:
- (c) the Australian Heritage Council is taken to have complied with subsection 324JH(5) of the amended EPBC Act; and
  - (d) the reference in paragraph 324JH(2)(b) of the amended EPBC Act to paragraph 324JH(5)(c) is taken to be a reference to paragraph 324G(4)(c) of the old EPBC Act.
- (8) If:
- (a) the Australian Heritage Council had, before the heritage commencement time, given the Minister a written assessment

of the place in accordance with section 324G of the old EPBC Act; and

- (b) the Minister determines, in writing, that this subitem applies to the nomination of the place for the first assessment period;

then that assessment, and any comments given to the Minister by the Council under section 324G of the old EPBC Act with that assessment, are taken, for the purposes of the amended EPBC Act, to have been given by the Council to the Minister:

- (c) in accordance with subsection 324JH(1) of the amended EPBC Act in relation to that place; and  
(d) on the day the Minister makes the determination referred to in paragraph (b).

- (9) A determination under subitem (6), (7) or (8) is not a legislative instrument.

#### **40 Section 324F emergency listings before the heritage commencement time**

- (1) This item applies if, before the heritage commencement time:
- (a) a place had been included in the National Heritage List under section 324F of the old EPBC Act at a particular time (the *inclusion time*); and
  - (b) the Minister had not acted under subsection 324J(5) of the old EPBC Act in relation to the continued inclusion of the place in the National Heritage List.
- (2) The place is taken, for the purposes of the amended EPBC Act, to have been included in the National Heritage List (the *amended EPBC Act emergency listing of the place*):
- (a) under subsection 324JL(1) of the amended EPBC Act; and
  - (b) at the inclusion time.
- (3) If the Minister had, before the heritage commencement time, complied with subsection 324F(5) of the old EPBC Act in relation to the inclusion of the place in the National Heritage List, the Minister is taken to have complied with subsection 324JL(3) of the amended EPBC Act in relation to the amended EPBC Act emergency listing of the place.
- (4) If the Minister had given the Chair of the Australian Heritage Council a request under subsection 324F(3) of the old EPBC Act for an

assessment of the place, the request is taken, for the purposes of the amended EPBC Act, to be a request:

- (a) made under subsection 324JM(1) of the amended EPBC Act; and
  - (b) that specifies an assessment completion time that is the same as the time the assessment would have become due under section 324G of the old EPBC Act if that section had not been repealed.
- (5) The Minister, and the Australian Heritage Council, may take into account, in dealing with a matter relating to the amended EPBC Act emergency listing of the place, any information that was obtained before the heritage commencement time in relation to the inclusion of the place in the National Heritage List under section 324F of the old EPBC Act.
- (6) If:
- (a) the Australian Heritage Council had, before the heritage commencement time, complied with subsection 324G(3A) of the old EPBC Act in relation to the assessment of the place; and
  - (b) the Minister determines, in writing, that this subitem applies to the amended EPBC Act emergency listing of the place;
- then, in relation to the amended EPBC Act emergency listing of the place:
- (c) the Australian Heritage Council is taken to have complied with section 324JN of the amended EPBC Act; and
  - (d) references in the amended EPBC Act (including as the amended EPBC Act applies because of section 324JO of the amended EPBC Act) to the notice under subsection 324JN(1) are taken to be references to the notice (the *old EPBC Act notice*) published by the Council when complying with subsection 324G(3A) of the old EPBC Act in relation to the assessment of the place; and
  - (e) regulations (if any) referred to in paragraph 324JN(3)(b) of the amended EPBC Act do not apply to comments received by the Council in response to the old EPBC Act notice.
- (7) If:
- (a) the Australian Heritage Council had, before the heritage commencement time, complied with subsection 324G(4) of

the old EPBC Act in relation to the assessment of the place;  
and

- (b) the Minister determines, in writing, that this subitem applies to the amended EPBC Act emergency listing of the place;

then, in relation to the amended EPBC Act emergency listing of the place:

- (c) the Australian Heritage Council is taken to have complied with subsection 324JH(5) of the amended EPBC Act (as that subsection applies because of section 324JO of the amended EPBC Act); and
- (d) the reference in paragraph 324JH(2)(b) of the amended EPBC Act (as that paragraph applies because of section 324JO of the amended EPBC Act) to paragraph 324JH(5)(c) is taken to be a reference to paragraph 324G(4)(c) of the old EPBC Act.

(8) If:

- (a) the Australian Heritage Council had, before the heritage commencement time, given the Minister a written assessment of the place in accordance with section 324G of the old EPBC Act; and
- (b) the Minister determines, in writing, that this subitem applies to the amended EPBC Act emergency listing of the place;

then that assessment, and any comments given to the Minister by the Council under section 324G of the old EPBC Act with that assessment, are taken, for the purposes of the amended EPBC Act, to have been given by the Council to the Minister:

- (c) in accordance with subsection 324JH(1) of the amended EPBC Act (as that subsection applies because of section 324JO of the amended EPBC Act) in relation to that place; and
- (d) on the day the Minister makes the determination referred to in paragraph (b).

(9) A determination under subitem (6), (7) or (8) is not a legislative instrument.

#### **41 Changes to section 324F emergency listings not published etc. before the heritage commencement time**

If, before the heritage commencement time:

- (a) under subsection 324J(5) of the old EPBC Act, the Minister removed from the National Heritage List a place or a National Heritage value of a place, or altered the boundary of a place included in the List; and
  - (b) the Minister had not complied with subsection 324J(7) of the old EPBC Act in relation to the removal or alteration;
- then despite the repeal of subsections 324J(7) and (9) of the old EPBC Act, those subsections continue to apply after the heritage commencement time in relation to the removal or alteration as if the repeal had not happened.

#### **42 Section 341E nominations made before the heritage commencement time**

- (1) This item applies if, before the heritage commencement time:
  - (a) a place had been nominated under section 341E of the old EPBC Act; and
  - (b) the Minister had not decided whether to include the place in the Commonwealth Heritage List.
- (2) The nomination is taken to have been made, for the purposes of the amended EPBC Act, in response to the invitation under section 341H of the amended EPBC Act in relation to the first assessment period for the Commonwealth Heritage List.
- (3) The regulations referred to in paragraph 341H(3)(b) and (c) of the amended EPBC Act are taken to have been complied with in relation to the nomination.

Note: For a place to have been nominated under section 341E of the old EPBC Act, the nomination will have had to have been made in accordance with the regulations made for the purposes of that section.

- (4) If, before the heritage commencement time, the Minister had requested the Australian Heritage Council to assess the place, the Minister is taken, for the purposes of section 341J of the amended EPBC Act, to have given the nomination to the Australian Heritage Council in relation to the first assessment period for the Commonwealth Heritage List.

Note 1: If under this subitem the Minister is taken, for the purposes of section 341J of the amended EPBC Act, to have given the nomination to the Australian Heritage Council, the Council must then decide whether to include the place on the proposed priority assessment list for the first assessment period (see section 341JA of the amended EPBC Act).

Note 2: If, before the heritage commencement time, the Minister had not requested the Australian Heritage Council to assess the place, section 341J of the amended EPBC Act requires the Minister to give the nomination to the Australian Heritage Council together with the other nominations in relation to the first assessment period.

(5) The Minister, and the Australian Heritage Council, may take into account, in dealing with the nomination, any information that was obtained in relation to the nomination under the old EPBC Act.

(6) If:

- (a) the Australian Heritage Council had, before the heritage commencement time, complied with subsection 341G(3A) of the old EPBC Act in relation to the assessment of the place; and
- (b) the Minister determines, in writing, that this subitem applies to the nomination of the place for the first assessment period;

then, in relation to that nomination of the place:

- (c) the Australian Heritage Council is taken to have complied with section 341JF of the amended EPBC Act; and
- (d) references in the amended EPBC Act to the notice under subsection 341JF(1) are taken to be references to the notice (the *old EPBC Act notice*) published by the Council when complying with subsection 341G(3A) of the old EPBC Act in relation to the assessment of the place; and
- (e) regulations (if any) referred to in paragraph 341JF(4)(b) of the amended EPBC Act do not apply to comments received by the Council in response to the old EPBC Act notice.

(7) If:

- (a) the Australian Heritage Council had, before the heritage commencement time, complied with subsection 341G(4) of the old EPBC Act in relation to the assessment of the place; and
- (b) the Minister determines, in writing, that this subitem applies to the nomination of the place for the first assessment period;

then, in relation to that nomination of the place:

- (c) the Australian Heritage Council is taken to have complied with subsection 341JG(5) of the amended EPBC Act; and
- (d) the reference in paragraph 341JG(2)(b) of the amended EPBC Act to paragraph 341JG(5)(c) is taken to be a reference to paragraph 341G(4)(c) of the old EPBC Act.

- (8) If:
- (a) the Australian Heritage Council had, before the heritage commencement time, given the Minister a written assessment of the place in accordance with section 341G of the old EPBC Act; and
  - (b) the Minister determines, in writing, that this subitem applies to the nomination of the place for the first assessment period;
- then that assessment, and any comments given to the Minister by the Council under section 341G of the old EPBC Act with that assessment, are taken, for the purposes of the amended EPBC Act, to have been given by the Council to the Minister:
- (c) in accordance with subsection 341JG(1) of the amended EPBC Act in relation to that place; and
  - (d) on the day the Minister makes the determination referred to in paragraph (b).
- (9) A determination under subitem (6), (7) or (8) is not a legislative instrument.

#### **43 Section 341F emergency listings before the heritage commencement time**

- (1) This item applies if, before the heritage commencement time:
- (a) a place had been included in the Commonwealth Heritage List under section 341F of the old EPBC Act at a particular time (the *inclusion time*); and
  - (b) the Minister had not acted under subsection 341J(5) of the old EPBC Act in relation to the continued inclusion of the place in the Commonwealth Heritage List.
- (2) The place is taken, for the purposes of the amended EPBC Act, to have been included in the Commonwealth Heritage List (the *amended EPBC Act emergency listing of the place*):
- (a) under subsection 341JK(1) of the amended EPBC Act; and
  - (b) at the inclusion time.
- (3) If the Minister had, before the heritage commencement time, complied with subsection 341F(5) of the old EPBC Act in relation to the inclusion of the place in the Commonwealth Heritage List, the Minister is taken to have complied with subsection 341JK(3) of the amended EPBC Act in relation to the amended EPBC Act emergency listing of the place.



- (4) If the Minister had given the Chair of the Australian Heritage Council a request under subsection 341F(3) of the old EPBC Act for an assessment of the place, the request is taken, for the purposes of the amended EPBC Act, to be a request:
- (a) made under subsection 341JL(1) of the amended EPBC Act; and
  - (b) that specifies an assessment completion time that is the same as the time the assessment would have become due under section 324G of the old EPBC Act if that section had not been repealed.
- (5) The Minister, and the Australian Heritage Council, may take into account, in dealing with a matter relating to the amended EPBC Act emergency listing of the place, any information that was obtained before the heritage commencement time in relation to the inclusion of the place in the Commonwealth Heritage List under section 341F of the old EPBC Act.
- (6) If:
- (a) the Australian Heritage Council had, before the heritage commencement time, complied with subsection 341G(3A) of the old EPBC Act in relation to the assessment of the place; and
  - (b) the Minister determines, in writing, that this subitem applies to the amended EPBC Act emergency listing of the place;
- then, in relation to the amended EPBC Act emergency listing of the place:
- (c) the Australian Heritage Council is taken to have complied with section 341JM of the amended EPBC Act; and
  - (d) references in the amended EPBC Act (including as the amended EPBC Act applies because of section 341JN of the amended EPBC Act) to the notice under subsection 341JM(1) are taken to be references to the notice (the *old EPBC Act notice*) published by the Council when complying with subsection 341G(3A) of the old EPBC Act in relation to the assessment of the place; and
  - (e) regulations (if any) referred to in paragraph 341JM(3)(b) of the amended EPBC Act do not apply to comments received by the Council in response to the old EPBC Act notice.

(7) If:

- (a) the Australian Heritage Council had, before the heritage commencement time, complied with subsection 341G(4) of the old EPBC Act in relation to the assessment of the place; and
- (b) the Minister determines, in writing, that this subitem applies to the amended EPBC Act emergency listing of the place;

then, in relation to the amended EPBC Act emergency listing of the place:

- (c) the Australian Heritage Council is taken to have complied with subsection 341JG(5) of the amended EPBC Act (as that subsection applies because of section 341JN of the amended EPBC Act); and
- (d) the reference in paragraph 341JG(2)(b) of the amended EPBC Act (as that paragraph applies because of section 341JN of the amended EPBC Act) to paragraph 341JG(5)(c) is taken to be a reference to paragraph 341G(4)(c) of the old EPBC Act.

(8) If:

- (a) the Australian Heritage Council had, before the heritage commencement time, given the Minister a written assessment of the place in accordance with section 341G of the old EPBC Act; and
- (b) the Minister determines, in writing, that this subitem applies to the amended EPBC Act emergency listing of the place;

then that assessment, and any comments given to the Minister by the Council under section 341G of the old EPBC Act with that assessment, are taken, for the purposes of the amended EPBC Act, to have been given by the Council to the Minister:

- (c) in accordance with subsection 341JG(1) of the amended EPBC Act (as that subsection applies because of section 341JN of the amended EPBC Act) in relation to that place; and
- (d) on the day the Minister makes the determination referred to in paragraph (b).

(9) A determination under subitem (6), (7) or (8) is not a legislative instrument.

**44 Changes to section 341F emergency listings not published etc. before the heritage commencement time**

If, before the heritage commencement time:

- (a) under subsection 341J(5) of the old EPBC Act, the Minister removed from the Commonwealth Heritage List a place or a Commonwealth Heritage value of a place, or altered the boundary of a place included in the List; and
- (b) the Minister had not complied with subsection 341J(7) of the old EPBC Act in relation to the removal or alteration;

then despite the repeal of subsections 341J(7) and (9) of the old EPBC Act, those subsections continue to apply after the heritage commencement time in relation to the removal or alteration as if the repeal had not happened.

**45 Plans in force under subsection 324S(1) before the heritage commencement time**

Despite the repeal of subsection 324S(1) of the old EPBC Act:

- (a) a plan that:
  - (i) was made under that subsection of the old EPBC Act; and
  - (ii) was in force immediately before the heritage commencement time;

continues in effect after the heritage commencement time as if it had been made under subsection 324S(1) of the amended EPBC Act; and

- (b) an obligation that the Minister had, immediately before the heritage commencement time, to make a plan under that subsection of the old EPBC Act continues after the heritage commencement time as if it were an obligation under subsection 324S(1) of the amended EPBC Act.

## **Part 8—Provisions relating to Commonwealth reserves**

### **46 Application of amendment made by 599**

The amendment made by 599 of the amending Schedule applies in relation to management plans approved by the Minister under section 370 of the EPBC Act after the commencement of that item.

### **47 Application of amendment made by 600**

The amendment made by 600 of the amending Schedule applies in relation to management plans approved by the Minister under section 370 of the EPBC Act after the commencement of that item.

### **48 Application of amendment made by 601**

The repeal and substitution of subsection 379(1) of the EPBC Act by item 601 of the amending Schedule applies in relation to appointments made after the commencement of that item.

### **49 Application of amendment made by item 603**

Subsection 382(1A) of the EPBC Act, as inserted by item 603 of the amending Schedule, applies after the commencement of that item in relation to members of Boards, whether appointed before or after the commencement of that item.

## **Part 9—Provisions relating to compliance and enforcement**

### **50 Amendments do not apply to things seized, or warrants issued, before commencement of amending items**

Subject to this Part, an item of the amending Schedule that amends or repeals a provision of Part 17 of the EPBC Act does not apply in relation to a thing seized, or a warrant issued, before the commencement of that item.

### **51 Application of amendment made by item 739**

The amendment made by item 739 of the amending Schedule applies to things forfeited, whether before or after the commencement of that item.

### **52 Saving of approvals**

An approval in force under section 453 of the EPBC Act immediately before the commencement of item 742 of the amending Schedule has effect after that commencement as if it related to organisms and specimens.

### **53 Application of amendment made by item 763**

The amendment made by item 763 of the amending Schedule applies to applications to the Federal Court for an injunction that are made after the commencement of that item.

### **54 Amendments of offence etc. provisions do not apply to actions and omissions that occurred before commencement of amending items**

An item of the amending Schedule that:

- (a) amends, repeals, or otherwise affects the scope of a provision of the EPBC Act that is an offence provision or a civil penalty provision; or
- (b) inserts a provision into the EPBC Act that is an offence provision or a civil penalty provision;

does not apply to an act or omission that occurred before the commencement of that item.

## Part 10—Other provisions

### 55 Application of amendments made by items 168 and 169

The amendments made by items 168 and 169 of the amending Schedule do not apply to bilateral agreements entered into before the commencement of those items.

### 56 Application of amendments made by items 386 etc.

The amendments made by items 386, 387, 388, 413, 414, 415, 446, 447, 448, 463, 464, 465, 528, 529, 530, 531, 758, 759, 760, 761 and 762 of the amending Schedule do not apply in relation to any decision made under the EPBC Act before the commencement of those items.

### 57 Application of amendments made by items 788 etc.

The amendments made by items 788, 796, 798, 800, 817, 827 and 834 of the amending Schedule do not affect the validity of any decision made or action taken under the EPBC Act, or regulations made under that Act, before the commencement of those items.

### 58 Regulations may deal with transitional, saving or application matters

- (1) The Governor-General may make regulations dealing with matters of a transitional, saving or application nature relating to amendments made by this Act.
- (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made under this item may be expressed to take effect from a date before the regulations are registered under that Act.

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*[Minister's second reading speech made in—  
House of Representatives on 12 October 2006  
Senate on 6 November 2006]*

(149/06)