

2004-2005-2006

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT (ANTARCTIC SEALS
AND OTHER MEASURES) BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator the Hon Ian Campbell,
Minister for the Environment and Heritage)

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT (ANTARCTIC SEALS
AND OTHER MEASURES) BILL 2006

GENERAL OUTLINE

The purpose of this Bill is to amend the *Antarctic Treaty (Environment Protection) Act 1980* ('the Act') in order to better implement Australia's international obligations to protect Antarctic seals and conserve the Antarctic environment by:

- (a) Transferring the current provisions concerning the protection of Antarctic seals from the *Antarctic Seals Conservation Regulations 1986* ('the Regulations') to the Act thereby enabling appropriate penalties to be imposed for offences relating to seals.

The Regulations were made as an expedient to implement both the Convention for the Conservation of Antarctic Seals and the Protocol on Environmental Protection to the Antarctic Treaty. The level of penalties available under regulations is inadequate for seals-related offences. In order to provide appropriate penalties it is proposed to provide for the protection of seals in an Act rather than in the Regulations.

Where the Regulations specifically prevent the Minister from issuing a permit to allow a commercial sealing activity, the prohibition is expressed in the proposed amendments to the Act by only allowing a seal to be killed for particular science and education related purposes (which do not include commercial purposes);

- (b) Updating the offences in the Act in relation to the disturbance of Antarctic flora and fauna and creating new offences relating to the gathering and collecting of rocks and meteorites. These new offences are required to implement new obligations assumed by Australia under the Protocol on Environmental Protection to the Antarctic Treaty ('the Madrid Protocol');
- (c) Updating the penalties for offences in the Act to make the penalties comparable to other Commonwealth offences in relation to wildlife; and
- (d) Making minor and technical amendments to the Act.

The Bill also amends the *Water Efficiency Labelling and Standards Act 2005* in order to:

- (a) Enable a determination of a WELS product by the Commonwealth Minister to incorporate by reference the WELS standard that is applicable to that product; and
- (b) Make minor amendments to the definition of *offence against this Act* to ensure the definition is consistent with current drafting practices.

FINANCIAL IMPACT STATEMENT

The Bill will have no financial impact.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short title

1. This clause provides that the short title by which the Act may be cited is the *Environment and Heritage Legislation Amendment (Antarctic Seals and Other Measures) Act 2006*.

Clause 2 - Commencement

2. Paragraph 1 of the table in subclause 2(1) provides that the commencement date for sections 1, 2 and 3 and anything in the Bill not covered elsewhere by the table in subclause (1) is the day on which the Bill receives the Royal Assent.
3. Paragraph 2 of the table in subclause 2(1) provides that the commencement date for the provisions in Schedule 1 will be a day to be fixed by Proclamation. However, if any provisions do not commence within 6 months of the day on which the Bill receives the Royal Assent, those provisions will commence on the first day after the period of six months beginning on the day on which the Act receives the Royal Assent.
4. Paragraph 3 of the table in subclause 2(1) provides that the commencement date for Item 1 of Schedule 2 is immediately after the commencement of section 7 of the *Water Efficiency Labelling and Standards Act 2005* (WELS Act). Section 7 of the WELS Act commenced on 18 March 2005. This item has a retrospective commencement to correct a drafting error in the manner in which this definition was originally drafted.
5. Paragraph 4 of the table in subclause 2(1) provides that the commencement date for Item 2 of Schedule 2 is the day on which the Bill receives the Royal Assent.

Clause 3 – Schedule(s)

6. This clause provides that each Act specified in a Schedule is amended or repealed as set out in the Schedule and other items in the Schedule have effect according to their terms.

Schedule 1 – Amendments

Part 1 - Amendments

Antarctic Treaty (Environment Protection) Act 1980

Item 1 - Subsection 3(1) (definition of *animal*)

7. This item substitutes an expanded definition of *animal* to include “an egg, part of an egg and an eggshell” as well as “a dead animal and part of a dead animal (but not something manufactured from a dead animal or from part of a dead animal)”. Egg parts and parts of dead animal are capable of damaging the Antarctic environment by introducing non-indigenous disease. The amendment means that the introduction of egg parts and dead animals is subject to the same controls as the introduction of other animals. The offences in section 19 relating to animals are therefore expanded. The amendment is prompted by actual incidents, for example, where an ostrich egg was brought into the Antarctic. No provision existed at the time to address this situation.

8. The new definition of “animal” excludes “something manufactured from a dead animal or from part of a dead animal” to allow products, such as manufactured leather goods (i.e. boots and wallets etc) to be brought into and kept in the area to which the *Antarctic Treaty (Environment Protection) Act 1980* (the Act) applies.

Item 2 – Subsection 3(1)

9. This item inserts a definition of *disturb* into subsection 3(1). The Act contains a number of offences relating to disturbing animals (see for example subsection 19(2)). This item clarifies the current use of the term to distinguish between conduct which interferes with, and conduct which disturbs, flora and fauna in the Antarctic. The new definition also relates to the new offence created by of disturbing a native bird or native seal (inserted by Item 39 below).

Item 3 – Subsection 3(1)

10. This item inserts a definition of *interfere* into subsection 3(1). The Act contains an offence concerning the interference with specified animals. This item clarifies the current use of the term to distinguish between conduct which interferes with, and conduct which disturbs, flora and fauna in the Antarctic.

Item 4 – Subsection 3(1) (definition of *native bird*)

11. The purpose of this item is to make technical amendments to the definition of *native bird*. In relation to subparagraph 3(1)(a), these amendments consist of clarifying that the reference to “eggs” in the definition of “native bird” extends to “parts of eggs and eggshells” and, in the interests of plain English, replacing the term “of the Class Aves” with the term “bird”. In relation to subparagraph 3(1)(b), the term “specimen” is replaced with “bird” and the reference to “dead bird” is clarified as including “any part of a dead bird”.

Item 5 – Subsection 3(1) (definition of *native mammal*)

12. This item repeals the definition of *native mammal* as it is now considered to be redundant. The term “mammal” is not relevant as the only types of mammals naturally occurring in the area covered by the Act, ie the Antarctic, are seals and whales. The repealed definition of “native mammal” excludes whales and seals. Item 6 (below) inserts a definition of *native seal*, and item 10 (below) repeals the definition of whale.

Item 6 – Subsection 3(1)

13. This item inserts a definition of *native seal* into the Act. The insertion of this definition is necessitated by the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act.

Item 7 – Subsection 3(1) (paragraph (b) of the definition of *recognised foreign authority*)

14. The purpose of this item is to extend the definition of *recognised foreign authority* to a recognised foreign authority that has been issued, given or made by a Party (other than Australia) to the Convention for the Conservation of Antarctic Seals (“the Seals

Convention”) that has accepted under that Convention the same obligations as Australia in relation to the carrying on of that activity in the Antarctic. The extension of the definition is necessitated by the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act.

Items 8 & 9 – Subsection 3(1) (definition of *specially protected species*) and subsection 3(1) (definition of *take*)

15. These items replace the reference to “mammal” with a reference to “seal”. The term “mammal” is not relevant because the only types of mammals naturally occurring in the area covered by the Act, ie the Antarctic, are seals and whales. As the Act is not concerned with whales (which are protected by the *Environment Protection and Biodiversity Conservation Act 1999*), all references to “mammal” have been replaced with “seal” in the Act.

Item 10 – Subsection 3(1) (definition of *whale*)

16. The purpose of this item is to repeal the definition of “whale”. As the Act does not deal with whales, it is not necessary to define “whale”. Whales are protected by the *Environment Protection and Biodiversity Conservation Act 1999*.

Item 11 – At the end of section 3

17. The purpose of this item is to add subsections (6) and (7) at the end of section 3 of the Act. Subsection 3(6) is similar to subregulation 2(2) of the *Antarctic Seals Conservation Regulations 1986* and has been added to section 3 as a consequence of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act. Its purpose is to clarify the situation where expressions are used both in the Act and in the Seals Convention; in those circumstances, the expression will have the same meaning as in the Seals Convention.
18. Subsection 3(7) has been added in consequence to the insertion of definitions of *disturb* and *interfere* (inserted by Items 2 and 3, respectively). Subsection 3(7) clarifies that a reference in the Act to otherwise interfering with, or causing other interference with, an animal does not include a reference to disturbing the animal. This is because separate offences exist for interfering with and disturbing an animal.

Item 12 – Subsections 7C(1) and (2)

19. This item replaces the reference to “mammal” with a reference to “seal”. All references to “mammal” have been replaced with “seal” in the Act. The term “mammal” is not relevant because the only types of mammals naturally occurring in the area covered by the Act, ie the Antarctic, are seals and whales. As the Act is not concerned with whales, it is more accurate that the Act refers to seals rather than mammals.

Item 13 – Subsection 9(1)

20. The purpose of this item is to restructure subsection 9(1) of the Act to make its meaning plainer.

21. The amended subsection 9(1) provides the Minister with the discretion previously stated in subsection 9(1) to grant a person a permit in writing authorising the person to carry on the activities specified in the permit during the period specified in the permit.
22. New subsection 9(1AA) specifically identifies each of the activities for which the Minister may grant a permit under subsection 9(1). Previously, subsection 9(1) referred to a broad range of activities that could be authorised by a permit and listed the activities that could not be authorised by a permit. New subsection 9(1AA) also adds activities that may be authorised by a permit in paragraphs 9(1AA)(f) (gathering or collecting a meteorite in the Antarctic), 9(1AA)(g) (removing a rock or meteorite that was gathered or collected in the Antarctic from the Antarctic) and 9(1AA)(h) (bringing a native bird, native seal or native plant into the Antarctic). The addition of these activities reflects the creation of new offences in subsections 19AA(1), 19AA(2) and 19AB(1) (inserted by Item 66 below).
23. New subsection 9(1AB) clarifies that the grant of a permit by the Minister under subsection 9(1) is subject to the provisions of section 9 and the provisions of section 10 (Restrictions applicable to permits).
24. New subsection 9(1AC) clarifies that the grant of a permit under subsection 9(1) is subject to such conditions as the Minister thinks fit.

Item 14 – Subsection 9(2)

25. This item repeals subsection 9(2) and substitutes a new subsection 9(2). Currently, when deciding to grant a permit and in determining the conditions and limitations subject to which the permit is to be granted, the Minister is to have regard to the purposes and principles of the Protocol on Environmental Protection to the Antarctic Treaty (“the Madrid Protocol”). The purpose of this amendment is to clarify that, in addition to having regard to the Madrid Protocol, the Minister must also have regard to the purposes and principles of the Seals Convention if the Minister’s decision to grant a permit could affect a seal in seas to which the Seals Convention applies. This amendment is required as a consequence of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act. Paragraph 9(2)(b) provides a similar effect to paragraph 4(3)(a) of the *Antarctic Seals Conservation Regulations 1986*.

Item 15 – After section 9

26. This item inserts a new section 9A into the Act. The purpose of this amendment is to enable a person who is a principal (defined in new subsection 9A(6)) under a permit the discretion to authorise other persons to accompany principals under the permit in carrying out activities authorised by the permit provided the permit allows such authorisation. The person authorised to accompany principals under a permit must comply with the conditions of the permit. This amendment is consistent with other similar provisions in the *Environment Protection and Biodiversity Conservation Act 1999* which allow authorities to be issued by the holder of a permit.

Item 16 – Subsection 10(1)

27. This item replaces the reference to “native mammal” with a reference to “seal”. All references to “native mammal” have been replaced with “native seal” in the Act. The term “mammal” is not relevant because the only types of mammals naturally occurring in the area covered by the Act, ie the Antarctic, are seals and whales. As the Act is not

concerned with whales, it is more accurate that the Act refers to seals rather than mammals.

Item 17 – Subparagraph 10(1)(a)(i)

28. This item replaces the reference to “mammals” with a reference to “seals”. All references to “mammal” have been replaced with “seal” in the Act. The term “mammal” is not relevant because the only types of mammals naturally occurring in the area covered by the Act, the Antarctic, are seals and whales. As the Act is not concerned with whales, it is more accurate that the Act refers to seals rather than mammals.

Item 18 – Subparagraph 10(1)(a)(i)

29. The purpose of this item is to insert a reference to “local populations” in subparagraph 10(1)(a)(i) of the Act. This amendment clarifies that, should the Minister grant a permit allowing a person to kill, take, injure or otherwise interfere with a native bird or native seal, the Minister must be satisfied that local population levels will be replaced in the immediately succeeding breeding season by natural reproduction. In relation to seals, this amendment reflects a similar provision in the *Antarctic Seals Conservation Regulations 1986*, and is required as a consequence of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act. In relation to native birds, this amendment also more accurately implements Australia’s obligations under the 1991 Protocol on Environmental Protection to the Antarctic Treaty.

Item 19 – At the end of subparagraph 10(1)(a)(ii)

30. This item is of a technical nature only, to place “and” at the end of subparagraph 10(1)(a)(ii).

Item 20 – Subparagraphs 10(1)(b)(i) and (ii)

31. This item repeals subparagraphs 10(1)(b)(i) and (ii), substitutes those paragraphs with new subparagraphs 10(1)(b)(i) and (ii), and inserts a new subparagraph 10(1)(b)(iii). The amendments to subparagraphs 10(1)(b)(i) and (ii) clarify which aspects of subparagraphs 10(1)(b)(i) and (ii) apply to native birds and which aspects apply to both native birds and native seals. New subparagraph 10(1)(b)(iii) clarifies that a permit, if it authorises a person to kill, take, injure or otherwise interfere with native birds, should be expressed to ensure that the activities authorised by the permit will be carried out to the extent only that they are necessary for the management, monitoring or conserving of the environment or an historic site or monument.

Item 21 – Subsection 10(1A)

32. This item replaces the reference to “mammal” with a reference to “seal” wherever those references occur in subsection 10(1A). All references to “mammal” have been replaced with “seal” in the Act. The term “mammal” is not relevant because the only types of mammals naturally occurring in the area covered by the Act, ie the Antarctic, are seals and whales. As the Act is not concerned with whales, it is more accurate that the Act refers to seals rather than mammals.

Item 22 – Paragraph 10(1B)(a)

33. This item replaces the reference to “native animals” with a reference to “native seals, native birds, native invertebrates”. This amendment reflects the fact that the term “native animal” is not defined by the Act.

Item 23 – Subparagraphs 10(1B)(b)(i) and (ii)

34. This item is of a technical nature only, to replace “and” with “or” at the end of subparagraphs 10(1B)(b)(i) and (ii).

Item 24 – At the end of paragraph 10(1B)(b)

35. This item inserts a new subparagraphs 10(1B)(b)(iii) and 10(1B)(b)(iv) into the Act. The effect of the amendment is to provide additional grounds for which a permit can be issued to gather, collect, endanger or otherwise interfere with a native plant. The grounds are the management, monitoring or conserving of the environment or an historic site or monument; and to provide for the unavoidable consequences of scientific activities not otherwise authorised.

Item 25 – After subsection 10(1B)

36. This item inserts a new subsections 10(1C) and 10(1D) into the Act. These new subsections are relevant to the implementation of Australia’s obligations under the Protocol on Environmental Protection to the Antarctic Treaty (the Madrid Protocol).
37. New subsection 10(1C) is consequential to the creation of a new offence under the Act relating to the gathering or collecting of meteorites and the removal of a rock or a meteorite (inserted by Item 66). Pursuant to section 9 and Item 13 above, the Minister may grant a permit for the gathering or collecting of meteorites and the removal of a rock or meteorite. This amendment requires that a permit authorising a person to gather or collect a meteorite, or to remove a rock or a meteorite, must be expressed so as to ensure that the authorised activities will be carried on only to the extent they are necessary for providing specimens for scientific research, public education (including display in museums or other educational or cultural institutions) or such other educational or cultural purposes as the Minister thinks fit.
38. New subsection 10(1D) is consequential to the creation of a new offence under the Act relating to the return of indigenous species (being a native seal, native bird, or native plant) (inserted by Item 66). Pursuant to section 9 and Item 13 above, the Minister may grant a permit for the return of indigenous species to the Antarctic. This amendment requires that a permit authorising a person to return an indigenous species to the Antarctic must be expressed so as to ensure that the authorised person takes all reasonable precautions to prevent the introduction of micro-organisms not present in the Antarctic.

Item 26 – Subsection 12(2)

39. This item repeals subsection 12(2) and substitutes a new subsection 12(2) of the Act. New subsection 12(2) specifies those matters to which the Minister must have regard when deciding to vary or revoke any of the conditions of a permit, or to impose additional conditions. In particular, this amendment inserts an additional element which

requires the Minister to have regard to the purposes and principles of the Seals Convention if the Minister's decision to vary or revoke a permit could affect a seal in seas to which the Seals Convention applies. The amendment is a consequence of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act. Paragraph (12)(2)(b) provides a similar effect to regulation 8 of the *Antarctic Seals Conservation Regulations 1986*.

Item 27 – Subsections 12N(1), (2) and (3)

40. This item replaces the reference to “the regulations” with a reference to “section 12PA” and is required as a consequence of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act.

Item 28 – Subsection 12N(4)

41. This item clarifies that a suspension of an authorisation may remain in effect for a total period of 90 days. However, the day on which the suspension takes effect is not to be included in calculating that 90 day period.

Item 29 – At the end of section 12N

42. This item specifies the time at which a variation, suspension or revocation of an authorisation comes into effect.
43. A variation, suspension or revocation of an authorisation may come into effect immediately if the Minister considers that irreversible environmental damage would otherwise occur.

Item 30 – Section 12P

44. This item inserts a number (1) because a new subsection (2) is created, and is required as a consequence of Item 32 below.

Item 31 – Section 12P

45. This item replaces the reference to “the regulations” with a reference to “section 12PA” and is required as a consequence of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act.

Item 32 – At the end of section 12P

46. This item inserts new subsections (2), (3), (4) and (5) into the Act, and specifies the time at which a variation, suspension or revocation of a condition, or the imposition of a new condition, with regard to an authorisation takes effect.
47. A variation, suspension or revocation of a condition may come into effect immediately if the Minister considers that irreversible environmental damage would otherwise occur.

Item 33 – After Section 12P

48. This item inserts a new section 12PA into the Act. The purpose of new section 12PA is to specify the methods by which the notice referred to in section 12N to vary, suspend and revoke and authorisation, and the notice referred to in section 12P to vary, revoke, or impose additional conditions on an authorisation, must be given.

Item 34 – Subsection 15(3)

49. This item is of a technical nature only to reflect the current drafting practice of expressing pecuniary penalties in terms of penalty units rather than dollar amounts.

Item 35 – At the end of subsection 17(4)

50. The purpose of this item is to insert a new paragraph 17(4)(c) into the Act. New paragraph 17(4)(c) authorises an inspector to require a person whom the inspector finds doing, or who the inspector reasonably suspects of having done, an act requiring an environmental impact assessment authorisation to produce that authorisation or evidence of the existence of the authorisation. This amendment closes a gap in the Act which prevented inspectors from requesting the production of such authorisations or evidence in relation to a suspected offence under section 21A.

Item 36 – Subsection 17(7)

51. This item repeals subsection 17(7) and substitutes it with a new subsection. This amendment is a minor technical amendment required to rephrase the offence provision in accordance with current drafting practices and expresses the relevant penalty in terms of penalty units rather than dollar amounts.

Item 37 – Subsection 17(7B)

52. This item repeals subsection 17(7B). Currently, subsection 17(7B) provides that the offence does not apply if the person has a reasonable excuse. This defence is removed and reliance, instead, will be placed on the general defences available under Part 2.3 of the Criminal Code.

Item 38 – Subparagraphs 19(1A)(b)(i), (ii) and (iii)

53. This item replaces the reference to “mammal” with a reference to “seal” in subparagraphs 19(1A)(b)(i), (ii) and (iii). All references to “mammal” have been replaced with “seal” in the Act. The term “mammal” is not relevant because the only types of mammals naturally occurring in the area covered by the Act, ie the Antarctic, are seals and whales. As the Act is not concerned with whales, it is more accurate that the Act refers to seals rather than mammals.

Item 39 – After subparagraph 19(1A)(b)(iii)

54. This item inserts a new subparagraph 19(1A)(b)(iiia) into the Act. The effect of this amendment is to create a new offence of disturbing a single native bird or native seal. The amendment closes a gap in the legislation whereby protection was only granted to a concentration of more than 20 birds or individual birds that were breeding or moulting.

Item 40 – Subsection 19(1A) (penalty)

55. This item increases the penalty for an offence against subsection 19(1A) from \$2,000 or imprisonment for 12 months, or both, to 120 penalty units or imprisonment for 2 years, or both. This increase brings the penalty into line with the penalty for similar offences under the *Environment Protection and Biodiversity Conservation Act 1999*.

Item 41 – At the end of paragraph 19(1)(b)

56. This item is of a technical nature only to add “or” to the end of paragraph 19(1)(b).

Item 42 – Paragraph 19(1)(c)

57. Currently it is an offence for a person to bring into the Antarctic an animal, plant, virus, bacterium, yeast or fungus that is not indigenous to the Antarctic. The purpose of this item is to strengthen the biosecurity measures of the Act by expanding that offence so that it will also be an offence to *keep* one or more of those items in the Antarctic.

Item 43 – At the end of paragraph 19(1)(c)

58. This item is of a technical nature only to add “or” to the end of paragraph 19(1)(c).

Item 44 – Paragraph 19(1)(caa)

59. This item repeals paragraph 19(1)(caa) and substitutes a new paragraph 19(1)(caa). This amendment creates a new offence by prohibiting a person from bringing a dog into the Antarctic. Previously a person was only prohibited from keeping a dog in the Antarctic. By adding this new offence, the Act more accurately reflects Australia’s obligations under the Protocol on Environmental Protection to the Antarctic Treaty.

Item 45 – Paragraph 19(1)(cb)

60. This item is of a technical nature only to add “or” to the end of the paragraph 19(1)(cb).

Item 46 – Paragraph 19(1)(e)

61. This item replaces “the area;” with “the area.” in paragraph 19(1)(e), and is a minor grammatical correction only.

Item 47 – Subsections 19(1) and (1B) (penalty)

62. This item increases the penalty for an offence against subsections 19(1) and 19(1B) from \$2,000 or imprisonment for 12 months, or both, to 120 penalty units or imprisonment for 2 years, or both. This increase brings the penalty into line with the penalty for similar offences under the *Environment Protection and Biodiversity Conservation Act 1999*.

Item 48 – Paragraph 19(2)(a)

63. This item adds a reference to “or of seals” to paragraph 19(2)(a) and is required as a consequence of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act.

Item 49 – At the end of paragraph 19(2)(a)

64. This item is of a technical nature only to add “or” to the end of paragraph 19(2)(a).

Item 50 – Paragraph 19(2)(b)

65. This item adds a reference to “or of seals” to paragraph 19(2)(b) and is required as a consequence of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act.

Item 51 – At the end of paragraph 19(2)(b)

66. This item is of a technical nature only to add “or” to the end of paragraph 19(2)(b).

Item 52 – Paragraph 19(2)(c)

67. This item adds a reference to “or of seals” to paragraph 19(2)(c) and is required as a consequence of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act.

Item 53 – At the end of paragraph 19(2)(c)

68. This item is of a technical nature only to add “or” to the end of paragraph 19(2)(c).

Item 54 – Paragraph 19(2)(d)

69. This item adds a reference to “or of seals” to paragraph 19(2)(d) and is required as a consequence of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act.

Item 55 – At the end of paragraph 19(2)(d)

70. This item is of a technical nature only to add “or” to the end of paragraph 19(2)(d).

Item 56 – Paragraph 19(2)(e)

71. Currently paragraph 19(2)(e) makes it an offence for a person, whilst on foot, to disturb a concentration of birds or a bird that is breeding or moulting. This item repeals paragraph 19(2)(e) and substitutes a new paragraph. The purpose of this amendment is to make it an offence for a person to disturb a concentration of birds or of seals whilst on foot, and is required as a consequence of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act. As part of that transfer it is appropriate that similar offences apply in relation to seals as apply to birds where appropriate. The amendment also deletes the reference to “a bird that is breeding or moulting”. This

reference is redundant as a result of the new offence contained in paragraph 19(1A)(b)(iiiia) of disturbing a native bird generally, irrespective of whether it is or is not breeding or moulting (inserted by Item 39 above).

Item 57 – Subparagraph 19(2)(ea)(i)

72. This item replaces the reference to “animal” with a reference to “seal” in the context of referring to other native animals. The amendment reflects the fact that the term “native animal” is not defined by the Act.

Item 58 – Subparagraph 19(2)(ea)(ii)

73. This item replaces the reference to “animals” with a reference to “seals” in the context of referring to other native animals. The amendment reflects the fact that the term “native animal” is not defined by the Act.

Item 59 – Paragraph 19(2)(ea)

74. This item is of a technical nature only to add “or” to the end of paragraph 19(2)(ea).

Item 60 – Subsection 19(2) (penalty)

75. This item increases the penalty for an offence against subsection 19(2) from \$2,000 or imprisonment for 12 months, or both, to 120 penalty units or imprisonment for 2 years, or both. This increase brings the penalty into line with the penalty for similar offences under the *Environment Protection and Biodiversity Conservation Act 1999*.

Item 61 – At the end of paragraphs 19(3)(a), (b) and (ba)

76. This item is of a technical nature only to add “or” to the end of paragraphs 19(3)(a), (b) and (ba).

Item 62 – Paragraph 19(3)(c)

77. The purpose of this item is to delete a list of actions that cannot be authorised by a permit or a recognised foreign authority. This amendment is consequential to the amendment to subsection 9(1) (amended by Item 13 above). The listing of these actions in paragraph 19(3)(c) is considered to be no longer necessary as a result of the amendment to subsection 9(1).

Item 63 – Paragraph 19(3)(d)

78. This item repeals paragraph 19(3)(d) and substitutes a new paragraph 19(3)(d). The purpose of this item is to clarify specific actions for which the offences outlined in section 19 will not apply. It does this by referring to the term “scientific support facility” rather than “station” to better reflect the terms of the Protocol on Environmental Protection to the Antarctic Treaty. It also, in subparagraph 19(3)(d)(ii), adds an additional exception to the offences in paragraphs 19(2)(a), (2)(b), (2)(c) or (2)(e) relating to disturbing a concentration of birds by using an aircraft, a vehicle or vessel, an explosive or while on foot. The exception to the offence is where an action was

reasonably necessary for “managing, monitoring or conserving the environment or an historic site or monument”. The amendment therefore allows a wider range of actions to be in the interest of the environment or historic sites and monuments.

Item 64 – Subsection 19(4) (definition of *concentration*)

79. The effect of this item is to insert a definition of a concentration of seals to the existing definition of a concentration of birds. The new definition is necessary as a result of the transfer of the *Antarctic Seals Conservation Regulations 1986* into the body of the Act and the inclusion of new offences regarding interfering with concentrations of seals in the Act.

Item 65 – Subsection 19(4) (definition of *permit*)

80. This item repeals the definition of “permit” as it is not considered to add anything to the ordinary meaning of the word permit and is therefore unnecessary.

Item 66 – After section 19

81. This item adds two new categories of offences: offences relating to rocks and meteorites (new section 19AA); and offences relating to the return of indigenous species (new section 19AB). Both these categories of offences are necessary in order to implement new obligations imposed upon Australia as a party to the Protocol on Environmental Protection to the Antarctic Treaty.
82. New subsection 19AA(1) will make it an offence for a person to gather or collect a meteorite in the Antarctic without a permit. The maximum penalty for a contravention of this provision will be 120 penalty units, or imprisonment for 2 years, or both. New subsection 19AA(2) will make it an offence for a person to remove a rock or meteorite that was gathered or collected in the Antarctic (whether by that person or not), and that person does not have a permit authorising the removal of the rock or meteorite from the Antarctic. The maximum penalty for a contravention of this provision will be 120 penalty units or imprisonment for 2 years, or both.
83. New section 19AB will make it an offence for a person to bring into the Antarctic a native seal, a native bird, or a native plant without a permit. The maximum penalty for a contravention of this provision will be 120 penalty units or 120 penalty units, or both. This amendment is to provide better protection to the Antarctic environment from the risk of introduced organisms and disease.

Item 67 – Section 19A

84. This item is of a technical nature only and inserts “(1)” before the opening words of section 19A. This amendment is required as a consequence of Item 69 below.

Item 68 – Section 19A (penalty)

85. Currently, the penalty for an offence against section 19A is \$100,000. This item amends the penalty to 1,000 penalty units to reflect current drafting practices that penalties be expressed in penalty units and imposes an additional penalty of 16 years imprisonment, or both. The ban on mining is a key feature of the Madrid Protocol and the severity of

the proposed penalty reflects the degree of premeditated planning that would be required to commit this offence and the seriousness of such an action.

Item 69 – At the end of section 19A

86. This item inserts a new subsection 19A(2) at the end of section 19A. This new subsection clarifies that the gathering or collecting of a meteorite in accordance with a permit does not fall within the prohibition against mining in the Australian Antarctic Territory as set out in subsection 19A(1).

Item 70 – Section 19B

87. This item is of a technical nature only and inserts “(1)” before the opening words of section 19A. This amendment is required as a consequence of Item 73 below.

Item 71 – Section 19B (penalty)

88. Currently, the penalty for an offence against section 19B is \$100,000. This item amends the penalty to 1,000 penalty units to reflect current drafting practices that penalties be expressed in penalty units, and imposes an additional penalty of 16 years imprisonment, or both. The ban on mining is a key feature of the Madrid Protocol and the severity of the proposed penalty reflects the degree of premeditated planning that would be required to commit this offence and the seriousness of such an action.

Item 72 – Paragraph 19B(b)

89. This item omits 19A(b) and substitutes it with 19A(1)(b). This amendment is of a technical nature only and is required as a result of Item 67 above.

Item 73 – At the end of section 19B

90. This item inserts a new subsection 19B(2) at the end of section 19B. This new subsection clarifies that the gathering or collecting of a meteorite in accordance with a permit does not fall within the prohibition against mining in the Antarctic by Australian nationals as set out in subsection 19B(1).

Item 74 – Paragraph 19C(3)(a)

91. This item updates the maximum penalty that can be imposed on an individual for an offence against section 19A (Prohibition against mining in the Territory) and section 19B (Prohibition against mining in the Antarctic) in circumstances where those offences have been dealt with summarily from \$10,000 to 100 penalty units (\$11,000). This amendment reflects the current drafting practices of expressing pecuniary penalties in terms of penalty units rather than dollar amounts.

Item 75 – Paragraph 19C(3)(b)

92. This item updates the maximum penalty that can be imposed on a body corporate of an offence against section 19A (Prohibition against mining in the Territory) and section 19B (Prohibition against mining in the Antarctic) in circumstances where those offences have been dealt with summarily from \$50,000 to 500 penalty units (\$55,000). Thai

amendment reflects the current drafting practice of expressing pecuniary penalties in terms of penalty units rather than dollar amounts, and is consistent with section 4B of the *Crimes Act 1914* (section 4B of the Crimes Act 1914 provides that the maximum pecuniary penalty that can be imposed on a body corporate is five times the maximum pecuniary penalty which the court can impose on an individual convicted of the same offence).

Item 76 – Paragraph 20(1)(a)

93. The purpose of this item is clarify that a person who is authorised under section 9A by a principal of a permit to carry on activities authorised by the permit also commits an offence under section 20 of the Act if the person who is authorised to carry on the activities under the permit engages in conduct and that conduct contravenes a condition of the principal’s permit.

Item 77 – Subsection 20(1) (penalty)

94. This item increases the penalty for this offence from \$1,000 or imprisonment for 6 months, or both, to 60 penalty units or imprisonment for 1 year, or both. This increase brings the penalty into line with the penalty for similar offences under the *Environment Protection and Biodiversity Conservation Act 1999*.

Item 78 – Subsection 21(1)

95. Currently the Act requires a person who does a specified act, in accordance with a permit issued under the Act or a recognised foreign permit, to report to the Minister that they have done the act.
96. This item deletes the requirement to report to the Minister in relation to a permit from a foreign authority. It is not possible under the current information exchange arrangements between Treaty Parties to always know when a foreign permit has been issued and thus this requirement cannot be enforced.
97. This item also changes the penalty for a failure to comply with the requirement to report to the Minister actions pursuant to a permit issued under the Act. The penalty will increase from \$1,000 or imprisonment for 6 months, or both to 60 penalty units (\$6,600) only. The imprisonment term will be removed because it is unwarranted by the nature of the offence. The pecuniary penalty is increased to improve the likelihood of compliance.

Item 79 – Subsection 21(2)

98. This item is of a technical nature to replace “authorized” with “authorised” in order to correct a spelling error.

Item 80 – After section 21

99. The purpose of this item is to insert new sections 21AA (Giving information about an act done in emergency situation) and 21AB (Giving further information about act done in emergency situation) in the Act.

100. New section 21AA will require a person who in an emergency does certain acts that constitute offences and does so without a permit or recognised foreign authority to notify the Minister or an authorised officer (defined in subsection 21AA(5)) of the act within 30 days of committing the act (the acts which must be notified are listed in subsection 21AA(2)). Where the notification is not given, a contravention of this provision has occurred which will attract a maximum penalty of 60 penalty units.
101. New subsection 21AA(3) allows a person to take longer to provide the required notification only in circumstances where it was not possible to comply with the 30 day time limit and the notification is given as soon as is practicable after that. This amendment has been made in order to assist Australia in collecting the information it needs to comply with its reporting obligations under the Protocol on Environmental Protection to the Antarctic Treaty.
102. New subsection 21AA(4) clarifies that strict liability applies to subsection 21AA(1). The imposition of strict liability is consistent with the similar offence outlined in section 21 of the Act.
103. New section 21AB will require a person, who in an emergency, does an act referred to in subsection 21AA(2) to provide a report to the Minister or an authorised officer (defined in subsection 21AB(4)) within 60 days of committing the act. The report must describe the action that was taken by the person and outline the reasons why the action was necessary. The maximum penalty that can be imposed in circumstances where the report is not provided within the required time frame is 60 penalty units.
104. New subsection 21AB(2) clarifies that the offence under subsection 21AB(1) will not apply only in circumstances where it was not possible for the person to comply with the 60 day time limit and the report is provided as soon as practicable after that.
105. New subsection 21AB(3) clarifies that strict liability applies to subsection 21AB(1). The imposition of strict liability is consistent with the similar offence outlined in section 21 of the Act.

Item 81 – Subsection 21A(2)

106. This item restructures the offence provision outlined in subsection 21A(2) in accordance with current drafting practice and to ensure that the offence is consistent with the *Criminal Code*.
107. This item also decreases the penalty for a contravention of subsection 21A(2) from \$100,000 to “imprisonment for 7 years or 420 penalty units (\$46,200), or both”. The carrying on of an activity without an environmental authorisation does not necessarily result in environmental harm. The penalty is accordingly reduced to better reflect the relativity to other offences which materially damage the environment, and which may be prosecuted in addition to this offence.

Item 82 – Subsection 21A(3)

108. This item restructures the offence provision outlined in subsection 21A(3) in accordance with current drafting practice and to ensure that the offence is consistent with the *Criminal Code*.
109. This also item decreases the penalty for a contravention of subsection 21A(3) from \$100,000 to 120 penalty units (\$13,200) or imprisonment for 2 years, or both. The pecuniary penalty is reduced to reflect the relativity between this offence and the offence created by subsection 21A(2).

Item 83 – Subsections 21A(5),(6) and (7)

110. This item deletes sections 21A (5), (6) and (7) in deference to section 4J of the *Crimes Act 1914*. This will not change the current position whereby offences against subsections (2) and (3) are indictable offences, but reduces the maximum penalties that can be imposed when those offences are dealt with summarily.
111. Currently, the maximum penalty that can be imposed for an offence against subsections (2) and (3) is \$10,000 for an individual or \$50,000 for a body corporate. The deference to section 4J of the *Crimes Act 1914* has the effect that the maximum penalty that can be imposed is 120 penalty units (\$13,200) for the offence in subsection (2) and 60 penalty units (\$6,600) for the offence in subsection (3). In addition, a term of imprisonment of 2 years and 12 months, respectively, will also be available by virtue of section 4J of the *Crimes Act 1914*.

Item 84 – After subsection 28(1)

112. This item deals with cases where the Minister makes a decision to vary, suspend or revoke an authorisation, or vary, revoke or impose additional conditions on an authorisation, and that decision is to take effect immediately on the grounds of a risk of irreversible damage to the environment. In such cases the Administrative Appeals Tribunal will not be able to stay, or otherwise review the operation or implementation of the decision.

Item 85 – Subsection 28(2)

113. This item is of a technical nature only to omit the reference to “subsection (1)” in subsection 28(2) and substitute it with a reference to “this section”.

Item 86 – Paragraph 29(1)(b)

114. This item repeals the paragraph in the Act that enables the Governor-General to make regulations to give effect to the Seals Convention. That power is no longer required as the provisions of the Seals Regulations will be incorporated into the Act and the Seals Regulations will be repealed.

Item 87 – Paragraph 29(2)(ba)

115. This item repeals the paragraph that enables the Governor-General to make regulations prohibiting the killing, taking, injuring or other interference with a seal that is indigenous to the Antarctic. That power is no longer required as the provisions of the Seals Regulations will be incorporated into the Act and the Seals Regulations will be repealed.

Item 88 – Subsection 29(5)

116. This item repeals subsection 29(5) and substitutes it with a new subsection 29(5) to reflect the current policy that where an Act authorises the creation of offences in a regulation, maximum penalties for offences in a regulation should not exceed 50 penalty units for an individual and 250 penalty units for a body corporate.

Part 2 – Application, saving and transitional provisions

Item 89 – Savings provisions relating to amendment at item 13

117. This item provides that permits granted and forms approved prior to the amendments specified in item 13 commencing will continue to have effect as if the permit was granted and the form was approved under the Act.

Item 90 – Savings provision relating to amendment at item 78

118. This item provides that forms approved by the Minister prior to the amendments specified in item 78 commencing will continue to have effect as if made under the Act.

Item 91 – Permits granted under the Antarctic seals regulations

119. This item has the effect that if a permit was granted to a person under the *Antarctic Seals Conservation Regulations 1986*, such a permit will be deemed to have been granted under new section 9 of the Act, and will continue in force for its unexpired period unless earlier varied, suspended or revoked following the commencement of this Schedule.

Item 92 – Applications for permits under the Antarctic seals regulations

120. This item has the effect that if a person has made an application to the Minister for the grant of a permit under the *Antarctic Seals Conservation Regulations 1986*, and a decision has not yet been made on the grant or refusal of that application, then the application will be taken to have been an application made under new section 9 of the Act following the commencement of this Schedule.

Schedule 2 – Other minor amendments

Water Efficiency Labelling and Standards Act 2005

Item 1 – Section 7 (paragraphs (b), (c) and (d) of the definition of *offence against this Act*)

121. This amendment repeals paragraphs (b), (c) and (d) of the definition of *offence against this Act* in section 7 of the *Water Efficiency Labelling and Standards Act 2005* (WELS Act) and substitute those paragraphs with a new paragraph (b). This is a technical amendment only, and is required to ensure that this definition is consistent with current drafting practices.

Item 2 – Subsection 18(2)

122. This amendment inserts a reference to “, or incorporate by reference” after the reference to “set out” in subsection 18(2) of the WELS Act. Subsection 18(1) of the WELS Act allows the Commonwealth Minister to determine in writing that water-use or water-saving products of a specified kind are WELS products. Subsection 18(2) of the WELS Act currently requires such a determination to set out the WELS standard for the particular WELS product. This amendment will allow a WELS standard for a particular WELS product to be incorporated by reference into the determination.