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HOUSE OF REPRESENTATIVES

**ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL
(NO. 1) 2006**

EXPLANATORY MEMORANDUM

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

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GENERAL OUTLINE

The purpose of this Bill is to amend the *Environment Protection and Biodiversity Conservation Act 1999* to make it more efficient and effective, to allow for the use of more strategic approaches and to provide greater certainty in decision-making.

In particular the Bill:

- Reduces processing time and costs for development interests;
- Provides an enhanced ability to deal with large-scale projects and give priority attention to projects of national importance through the use of strategic assessment and approvals approaches and putting in place measures to enable developers to avoid impacts on the matters of national environmental significance protected by the Act;
- Enables a better focus on protecting threatened species and ecological communities and heritage places that are of real national importance; and
- Clarifies and strengthens the enforcement provisions of the Act.

These changes will be made without weakening the protection that the Act provides for Australia's important biodiversity and heritage.

FINANCIAL IMPACT STATEMENT

There will be minor one-off costs to the Commonwealth Government, associated with the need to revise regulations and procedures and advise industry and other stakeholders accordingly. The Commonwealth Government will also incur costs in implementing the more strategic approaches and in enhancing its compliance and enforcement activities under the Act. While savings may result from the use of strategic approaches, the level of any savings will depend on the use that it is made of these approaches by business, industry, and States, Territories and Local Government. Depending on the uptake of the new strategic approaches it is likely that the Commonwealth will incur expenses for some time as work will be required in developing the new strategic approaches while continuing to administer project by project approvals under the Act.

REGULATION IMPACT STATEMENT

ISSUES

Background

The *Environment Protection and Biodiversity Conservation Act 1999* (the Act) commenced operation in July 2000. The development of the Act involved the most fundamental reform of Australian Government environment laws since the first environmental statutes were enacted in the early 1970s, and represents the first comprehensive attempt to define the environmental responsibilities of the Australian Government.

The Act enables the Australian Government to join with the States and Territories in providing a truly national scheme of environmental protection and biodiversity conservation. The Act focuses Australian Government interests on the protection of matters of national environmental significance, with the States and Territories having responsibility for matters of state and local significance. It puts in place a streamlined environmental assessment and approvals process, establishes an integrated regime for biodiversity conservation and the management of important protected areas and places, including National and Commonwealth heritage places. It does so in a way that is predictable, transparent, and efficient, employing statutory timeframes to ensure timely decision-making.

The Act has been in operation for 6 years. During this time:

- Nearly 2000 referrals have been made, resulting in decisions that approval was required in relation to around 420 development proposals, nearly 200 assessments completed, and over 150 approval decisions made.
- Over 120 fisheries have been assessed and associated accreditations and declarations made.
- Nearly 200 new species, communities and processes have been included on the lists of threatened species, ecological communities and key threatening processes.
- Over 250 listed threatened species recovery plans and 50 Ramsar management plans are in place (including draft plans).
- Over 15,000 wildlife trade permits were issued.
- Over 370 places have been added to the National and Commonwealth Heritage lists since the commencement of the new heritage scheme in January 2005.

The new regulatory scheme introduced by the Act has been successful in providing higher levels of protection for the environment while providing timely, transparent and efficient approval processes. The 2002–03 Australian National Audit Office Audit of Referrals, Assessments and Approvals under the Act concluded, among other things, that the Department of Environment and Heritage has established and implemented rigorous processes that provide an assurance that the matters required to be considered under the Act are taken into account in a comprehensive manner. The Productivity Commission considered the Act as part of its inquiry into the impacts of native vegetation and biodiversity regulation and found that the Act met more of the criteria for good regulation than legislation in other jurisdictions, particularly by setting time limits for processes under the Act and taking economic and social matters into consideration in the approvals process. In addition, the successful operation of the Act has been acknowledged in the report to the Prime Minister on Australia's Export Infrastructure. The report states that

the operation of environmental protection legislation is now an accepted and well understood process, with the Act enabling the Government to rely on state processes.

What issues are being addressed by the proposed amendments?

In the first six years of operation of the Act, all aspects of the Act have been ‘road tested’. This road testing has involved not only the normal administration of the Act, but also external testing and scrutiny through legal challenges, inquiries, audits, industry initiatives and debates in public fora.

While the Act regulatory framework has been successful, the road testing has identified important areas where changes to the Act can be made to optimise its operation. These changes will reduce risks in administration of the Act, remove uncertainty and delay, minimise duplication, increase transparency and flexibility, and provide incentives to use the Act in a more strategic manner. The changes are necessary for the Act to achieve its objectives of protecting the environment, especially matters of national environmental significance, and promoting ecologically sustainable development. The principal issues which are being addressed by the proposed amendments are summarised below.

Inefficient, onerous or unnecessary processes with limited environmental outcomes

It is important for the Act to provide environmental outcomes in an efficient, cost-effective manner. It is possible to amend the Act in a manner which will reduce the impost on business while at the same time maintaining the level of environment protection provided by the Act. In particular the following requirements are inefficient, onerous or unnecessary, while producing limited environmental outcomes:

- The number of decision points in the assessment and approval process;
- Prescriptive requirements for the preparation of species recovery plans;
- Assessment processes applicable to cetaceans permits which do not apply to other protected species;
- Inefficient consultation processes for heritage listing involving large numbers of owners and occupiers or indigenous persons;
- Prescriptive requirements for the listing of key threatening processes and making of threat abatement plans;
- Prescriptive requirements for surveys of protected species in Commonwealth areas;
- The requirement for further assessment of World Heritage places before placement on the National Heritage list.

Insufficient incentives and statutory constraints on strategic approaches

The effectiveness of the Act can be improved by increasing capacity and incentives to undertake strategic approaches to environmental assessment, management and protection, particularly in relation to:

- Strategic assessments;
- The implementation of conservation agreements;
- The development of bioregional plans;
- The ability to introduce protected species into suitable habitat areas without being subject to the penalty provisions for incidental harm.

Duplicative and inconsistent processes

The Act achieved a substantial rationalisation and integration of environmental regulation by the Australian Government. It has replaced seven Australian Government statutes with a single integrated regulatory regime. The Act also substantially reduced duplication with State and Territory processes by allowing for accreditation of these processes under bilateral agreements. The proposed amendments aim to further reduce duplication of process and duplication of requirements within the Act and between the Act and State and Territory regulatory regimes.

The efficiency and effectiveness of the Act can be improved by addressing the potential for duplicative processes, as outlined above. In particular:

- Potential duplication of Act processes, including:
 - the requirement to ask Minister for advice in relation to actions impacting on Commonwealth Heritage places and the similar requirement in relation to actions impacting on Commonwealth Heritage places in the Indian Ocean Territories;
 - species permits and authorisation of actions taken in accordance with a Commonwealth reserves management plan.
- Insufficient integration in relation to:
 - assessment and approvals process and the issuing of protected species permits;
 - consideration of nomination of a species or place for more than one list;
 - consideration of distinct but overlapping heritage nominations.
- Difficulties in accrediting or recognising:
 - Fisheries managed under the *Torres Strait Fisheries Act 1984* in addition to those managed under the *Fisheries Management Act 1991*;
 - State authorisation processes for the purpose of an approvals bilateral agreement.

Consistency can be increased by:

- aligning offences against cetaceans with similar wildlife export/import offences.
- providing for the prohibition of conduct in Commonwealth reserves, consistent with other regulatory provisions.

Insufficient transparency and risks to the environment

The Act introduced new standards of accountability and transparency for environmental regulation in Australia by incorporating extensive public consultation provisions, statutory timeframes, and extended standing provisions. Despite these improvements experience with the operation of the Act has revealed that there are some areas where additional transparency would enhance the ability of interest groups and the general public to participate in Act processes.

Transparency can be increased by:

- Introducing publication requirements for revised documentation in relation to projects assessed by Preliminary Documentation, consistent with publication requirements for projects assessed by Public Environment Report and Environmental Impact Statement;
- Introducing uniform publication requirements for all referrals of proposed actions under the Act;

- Provision for public comment in relation to the reconsideration of the decision whether or not an action requires assessment and approval under the Act;
- Requiring public comments to be summarised in Public Environment Reports;
- Requiring public comments to be summarised in Environmental Impact Statements;
- Introducing the capacity to request public comment on terms of reference for strategic assessments.

Example – public comment on reconsideration decisions

Under section 75 of the Act, when a proposal to take an action is referred to the Minister, the Minister must decide whether or not the action requires assessment and approval under the Act. In making the section 75 decision the Minister takes account of any public comments which are received in relation to the referral. Under section 87, the Minister has the ability to revoke this decision and substitute a new decision if satisfied that it is warranted by the availability of substantial new information about the impacts which the action is likely to have on a matter of national environmental significance. At present there is no capacity for the Minister to invite or consider public comments when reconsidering a section 75 decision. The proposed amendments to the Act expressly provide for a proponent, or other person, to request the reconsideration of the section 75 decision and for the invitation and consideration of public comments in relation to this decision.

Risk of harm to protected species can be reduced by limiting:

- Disclosure of sensitive information critical to the protection of matters of national environmental significance when inviting public comment on assessment documentation.
- Disclosure of information about a listed species in recovery documents that could jeopardise the survival of the species.

Insufficient flexibility and scope

Environmental protection, management and assessment involve complex interactions between people and the natural environment. Environmental conditions change over time. Development projects also evolve in response to changing priorities, changing economic conditions, changing circumstances and different regulatory requirements. The Act incorporates mechanisms which allow the Minister and the Department to respond to these changes, such as the capacity to vary approval conditions. However, experience with the operation of the Act has given rise to a range of circumstances which were not envisaged when the Act was developed. The proposed amendments include a range of measures which are intended to provide a greater degree of flexibility to respond to change and unanticipated circumstances.

Increasing the flexibility of certain Act processes would allow the Department to use a more tailored approach to individual projects and circumstances. Greater flexibility is needed in relation to:

- Variations during the assessment and approval process and after approval, including:
 - changes to actions;
 - changes to persons taking actions;
 - changes to circumstances;
- Assessment of actions for which there are a number of alternative options;
- Variation of the time length of approvals;
- Minor variations to accredited management plans and bilateral agreements;

- The impact of the listing of fish species on commercial fisheries; and
- Activities in Commonwealth reserves when a management plan is not in operation.

Example – variations to proposals during the assessment and approval process

Proponents are encouraged to refer development proposals under the Act early in the planning stage so that environmental assessment can influence the siting, design, timing and implementation of proposals. As these proposals evolve it is common for priorities or circumstances to change. The Act provides for the referral, assessment and approval of ‘an action’, with very little ability to deal with variations to the proposed action.

However, experience has shown that a greater degree of flexibility is necessary in order to avoid the possibility of a proponent having to recommence the entire environmental, assessment and approvals process even when the variation is likely to result in an improved environmental outcome. The proposed amendments include an amendment to expressly allow variations which do not involve a substantial change in the character of an action and an amendment to expressly allow proponents to refer a proposal which involves a range of different options.

Compliance outcomes can be improved by increasing the flexibility and effectiveness of compliance and enforcement mechanisms, particularly in relation to:

- The lack of appropriate and effective alternatives to litigation in varying circumstances;
- Ensuring that employers, principals and landowners are accountable for actions by their employees, agents and land managers respectively;
- Offence formulations which address evidentiary difficulties;
- The provision for criminal penalties for serious contraventions of the Act in Commonwealth reserves, in addition to civil penalties;
- Scope of the court’s power to grant rehabilitation orders and ability to grant a rehabilitation order in the absence of an injunction;
- Powers under warrant and powers of seizure;
- Provision for civil penalties and liability of executive officers of corporations for non-compliance with provisions of approved wildlife trade operations and management plans;
- Provision of enforcement of conditions relating to future sale, management, manner of keeping and reproduction of certain imported and exported wildlife specimens;
- Ability to prosecute non-citizens who contravene the Act;
- Powers of investigation, specifically the ability to introduce a ‘notice to produce and attend’.

Example – access to monitoring warrants

Currently under the Act provisions there is no capacity to access monitoring warrants other than by personal application to a Magistrate. Difficulties arise from the need to apply in person for warrants, particularly when an officer is in a remote location which does not have a nearby Magistrate. The *Customs Act 1901* allows an officer exercising monitoring powers to apply to a Magistrate for a warrant by telephone, telex, fax or other electronic means in an urgent case, or if the delay that would occur if an application was made in person would frustrate effective execution of the warrant. The proposed amendments provide for the application for monitoring warrants by electronic means in similar terms to the *Customs Act 1901*.

Ambiguities, anomalies or lack of certainty

Experience with the operation of the Act has revealed a range of provisions which may be ambiguous, anomalous or which lack certainty in certain situations.

Greater clarification is required in relation to:

- The extent to which the Minister must consider indirect impacts when deciding whether or not an action requires assessment and approval under the Act.
- The scope of the ‘prior authorisations’ exemption.
- The circumstances in which further assessment/review of fisheries management plan accreditation will be undertaken (when impacts differ from those originally assessed).
- The period in which a State/Territory Minister can make a request for reconsideration of a controlled action decision.
- When copies of assessment reports can be provided to third parties.
- Application of penalty provisions for activities in Commonwealth reserves, without a management plan, to future mining activities.
- Application of the Act to land ‘freeholded’ under a long-term lease in the external territories.

There are also a range of terms which require clarification or correction to give proper effect to relevant provisions. Clarification or correction is required in relation to:

- The definition of “control” in relation to heritage responsibility of Commonwealth agencies for heritage places;
- The definition of “environment”, specifically the application of “social, economic and cultural aspects” to heritage values;
- The definition “international agreement”, specifically that this denotes the current version of the agreement; and
- The meaning of “take” in relation to protected species.

Certainty can also be increased by:

- Provision for a binding determination that an action does or does not require assessment and provision of advice under section 160.
- Limiting the ability to revisit approval or a ‘not-controlled action’ decisions when a new species is listed after the relevant decision.

Potential for delay or frustration of processes

The Act makes extensive provision for consultation and participation in regulatory processes. It is important to maintain a high level of public participation and transparency, while ensuring that processes achieve their objectives in an efficient and equitable manner. There are a limited number of processes which have not operated as effectively or efficiently as intended, particularly in relation to:

- The National and Commonwealth Heritage listing processes;
- The listing processes for species, communities and threatening processes;
- Judicial review and administrative appeals processes;
- Requests for reconsideration of section 75 decisions;
- Premature disclosure of information by advisory committees.

Technical and other issues

There are a number of technical and other issues which require attention these include:

- Simplification of requirement that States and Territories notify extent to which matters protected by Act have been assessed under their legislation and de-linking this requirement from the commencement of the approvals process under the Act;
- Ability to reject nominations for species listing which do not satisfy the nominations requirements specified in the Regulations; and
- Errors of wording in various sections.

Why is government action needed to address these issues?

The existing regulatory regime of the Act represents government action with the following objectives:

- To provide for the protection the environment, especially those aspects of the environment that are matters of national environmental significance.
- To promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources.
- To promote the conservation of biodiversity.
- To promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples.
- To assist in the co-operative implementation of Australia's international environmental responsibilities.
- To recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity.
- To promote the use of indigenous people's knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

Further government action, in the shape of the proposed amendments, is required to ensure that these objectives are achieved more effectively and efficiently.

The proposed amendments would benefit stakeholders by:

- Improving the efficiency and timeliness of approval decisions;
- Increasing the ability of Australian Government, states and territories, and industry to engage in strategic approaches to environmental assessment and management; and
- Improving the certainty and clarity of processes under the Act, thereby reducing the administration and compliance costs for stakeholders.

OBJECTIVES

The overarching objective of the proposed amendments which are the subject of this RIS is to maintain the Australian Government's ability to protect the environment while at the same time:

- Provide a more effective, efficient and strategic regulatory process for stakeholders.
- Reduce duplication in regulatory processes.
- Increase the flexibility within Act processes.
- Reduce administrative and compliance costs.
- Increase the effectiveness of the compliance regime.

OPTIONS

The Act is already in operation and its regulatory impact was examined by a previous RIS. The proposed amendments do not substantially alter the framework or objects of the Act but are aimed at optimising the operation of the Act. As discussed above, the Act is operating successfully and is generally well accepted and understood. The purpose of the proposed amendments is to improve the operation of the existing provisions. In this context, the only realistic options are to make some or all of the proposed amendments or to continue to work within the existing statutory framework. Measures to address the problems identified above are best addressed by amendments to the existing legislative regime as they stem directly from practical or technical deficiencies in those provisions. The proposed amendments have been specifically identified to address issues that cannot be adequately resolved administratively.

IMPACT ANALYSIS (COSTS AND BENEFITS) OF EACH OPTION

Who is affected by the problem and who is likely to be affected by its proposed solutions?

The main groups affected by or having an interest in the problem and its proposed solutions are:

- companies, partnerships or individuals undertaking development actions or other actions with impacts on the environment;
- Australian Government agencies;
- State and Territory governments and Local Government; and
- Environment and heritage groups.

Differing stakeholder groups will be impacted to varying degrees depending on the nature of the regulatory changes. The impact of the proposed amendments on each of the groups outlined above will be discussed in more detail below.

Effect on existing regulations and the roles of existing regulatory authorities

As outlined above, the Act is currently in operation and is well accepted and understood. The proposed amendments will fine tune the operation of the Act, to make it work more efficiently and effectively.

Expected impacts of the proposed options as likely benefits or likely costs

General benefits and costs of proposed amendments

General benefits of the proposed amendments are:

- More efficient and effective approval processes.
- Increased flexibility to deal with changes in circumstances or priorities.
- Increased certainty for stakeholders.
- Reduced duplication of processes, and broader scope for accreditation.
- Greater scope for strategic approaches to environmental assessment and management.
- More effective and more flexible compliance and enforcement provisions.

General costs of the proposed amendments are:

- Implementation costs for the Australian Government.
- Minor costs associated with the need for stakeholders to become familiar with the new arrangements.
- Costs associated with minor additional publication requirements.

Further specific benefits and costs are outlined below by subject area.

Referrals, Assessments and Approvals

Benefits resulting from the proposed amendments to the Act's referral, assessment and approvals processes include:

- Simplified processes and reduced processing times for stakeholders seeking development approval decisions.
- New processes which allow for more efficient consideration of proposals which have minor impacts or unacceptably high impacts.
- Clarification of the scope and application of exemptions.
- Increased transparency in relation to the reconsideration of decisions by the Minister.
- Greater flexibility to deal with minor changes in circumstances and priorities during the assessment process.
- Increased legal certainty in relation to indirect impacts which must be considered by the Minister when deciding whether an action requires approval under the Act.
- Ability to approve actions undertaken in accordance with a strategic assessment or bioregional plan, where appropriate, instead of undertaking separate assessment and approval of each action.
- Simplified and more efficient processes for reviews and amendments to accredited management plans.
- Reduced duplication of Australian Government and state and territory processes by extending the ability of bilateral agreements to accredit State and Territory government approvals processes which will reduce business and industry costs.
- Greater transparency and consistency through publication of all referrals.
- Ability not to publish information which may threaten the survival of protected matters, such as listed threatened plant species.
- Greater transparency through requirement that Environmental Impact Statements and Public Environment Reports outline public comments.
- Improved decision-making associated with a broader capacity to seek further information from relevant parties when appropriate.
- Reduced duplication and increased flexibility through capacity for the Minister to rely on approval conditions set by other Australian Government and State and Territory Ministers, and broader capacity to vary conditions;
- Improved environmental outcomes by allowing a proponent to voluntarily undertake compensatory actions or make financial contributions to conservation work.
- Greater certainty for Australian Government decision-makers in relation to referral of actions for assessment and advice.
- Greater flexibility and certainty through express provision for proponents to refer different options/locations for a proposed action.
- Increased certainty in relation to the responsibilities of principals and contractors.

- Reduced duplication between environmental assessment and permitting provisions.
- More efficient administration and greater certainty through resolution of definitional and technical uncertainty and problems.

Costs resulting from the proposed amendments to the Act's referral, assessment and approvals processes include:

- Implementation costs for the Australian Government.
- Minor costs associated with the need for stakeholders to become familiar with the new arrangements.
- Minor additional publication requirements.

Compliance costs

By streamlining the referral, assessment and approval processes the proposed amendments will reduce compliance costs by reducing the timeframes involved in undergoing environmental assessment. The removal of the requirement to prepare preliminary information will, on average, reduce overall timeframes by 20 business days. Closer integration of the assessment and approval processes will, on average, reduce overall timeframes by 10 business days. The amendments introduce a new process of assessment on referral information. For actions with low level impacts that would otherwise have been assessed at the level of preliminary documentation, this new process will reduce overall timeframes by at least six months. The proposed amendments also allow the Minister to give a proponent an early indication if an action is not likely to receive approval under the Act. This gives the proponent the opportunity to modify or change a proposal and resubmit a referral for assessment and approval.

The proposed amendments include a requirement for a proponent to publish revised preliminary documentation (in relation to assessments by preliminary documentation). This is consistent with the requirements for assessments by Environmental Impact Statements or Public Environment Reports. Out of the 1932 referrals received since the commencement of the Act, 122 have required assessment by preliminary documentation, an average of 21 per year. Advertisement costs are approximately \$2000-\$4000.

Protected species

Benefits resulting from the proposed amendments to the Act's protected species provisions include:

- Improved effectiveness of listing procedures and recovery planning for threatened species and ecological communities by allowing for a strategic approach, prioritisation of listings and a stronger focus on conservation outcomes.
- Provision for listing of commercially fished species with reduced impact on existing export fisheries.
- Simplification of cetacean permit provisions resulting in greater consistency in regulatory requirements and reduced timeframes for decision-making.
- Provision for non-disclosure of sensitive information in recovery documents that may jeopardise the survival of a species.
- Streamlined reporting requirements for fisheries impacting on protected species.
- More efficient administration and greater certainty through resolution of definitional and technical uncertainty and problems.

Costs resulting from the proposed amendments to the Act's protected species provisions include:

- Implementation costs for the Australian Government.
- Minor costs associated with the need for stakeholders to become familiar with the new arrangements.

Compliance Costs

Simplification of cetacean permit processes will reduce compliance costs for stakeholders who require cetacean permits. Streamlined reporting requirements for fisheries will also reduce compliance costs for stakeholders who undertake activities which impact upon protected species. Apart from this amendment, and initial costs associated with the need to become familiar with the new arrangements, the amendments to the protected species provisions of the Act are not expected to cause any significant change to compliance costs.

Fisheries

Benefits resulting from the proposed amendments to the Act's fisheries provisions include:

- Reduced duplication in regulatory requirements for fisheries through broader capacity to accredit Australian Government and state/territory fishery management arrangements.
- Clarification of arrangements for assessment and review of fisheries management accreditations.
- Clarification of the application and scope of exemptions.
- More efficient administration and greater certainty through resolution of definitional and technical uncertainty and problems.

Costs resulting from the proposed amendments to the Act's fisheries provisions include:

- Implementation costs for the Australian Government.
- Minor costs associated with the need for stakeholders to become familiar with the new arrangements.

Compliance Costs

Reduced duplication in the regulatory requirement for fisheries through broader capacity to accredit Australian Government and State and Territory fishery management arrangements will reduce compliance costs for stakeholders. Apart from this amendment, and initial costs associated with the need to become familiar with the new arrangements, the amendments to the fisheries provisions of the Act are not expected to cause any significant change to compliance costs.

Wildlife Trade

Benefits resulting from the proposed amendments to the Act's wildlife trade provisions include:

- Simplified and streamlined wildlife import provisions and less onerous approval mechanisms for some wildlife exports.
- More effective enforcement through provision for conditions to continue to apply after expiry of import/export permit.
- More efficient administration and greater certainty through resolution of definitional and technical uncertainty and problems.

Costs resulting from the proposed amendments to the Act's wildlife trade provisions include:

- Implementation costs for the Australian Government.
- Minor costs associated with the need for stakeholders to become familiar with the new arrangements.

Compliance Costs

Compliance costs will be reduced by proposed amendments simplifying and streamlining approval mechanisms for some wildlife exports. Compliance costs may potentially be increased by the continuation of conditions after a permit has expired. Changes to compliance costs are minor and not readily amenable to costing. Apart from initial costs associated with the need to become familiar with the new arrangements, the amendments to the wildlife trade provisions of the Act are not expected to cause any significant change to compliance costs.

Heritage

Benefits resulting from the proposed amendments to the Act's heritage provisions include:

- Improved efficiency of the heritage listing process by removing the onerous statutory requirements and providing for strategic approaches to be taken to listing.
- Increased ease of communication with owners or occupiers and people proposing listings by improving consultation mechanisms.
- Provision of greater certainty and removal of duplication for Australian Government agencies in relation to their responsibilities for protection of listed heritage places.
- Provision of greater certainty for owners of heritage listed properties in external territories.
- More efficient administration and greater certainty through resolution of definitional and technical uncertainty and problems.

Costs resulting from the proposed amendments to the Act's heritage provisions include:

- Implementation costs for the Australian Government.
- Minor costs associated with the need for stakeholders to become familiar with the new arrangements.

Compliance Costs

The proposed amendments to the heritage provisions of the Act are not expected to cause any significant changes to compliance costs.

Protected Areas (inc Commonwealth reserves and Conservation Zones)

Benefits resulting from the proposed amendments to the Act's protected areas provisions include:

- The ability to allow continuation of existing activities in Commonwealth reserves.
- Reduced administrative costs through capacity to extend the operation of a management plan for a Commonwealth reserve.
- More efficient administration and greater certainty through resolution of definitional and technical uncertainty and problems.

Costs resulting from the proposed amendments to the Act's protected areas provisions include:

- Implementation costs for the Australian Government.
- Minor costs associated with the need for stakeholders to become familiar with the new arrangements.

Compliance Costs

Proposed amendments to the protected areas provisions of the Act should reduce compliance costs by simplifying the current arrangements. The anticipated reduction in compliance costs is minor and not readily amenable to costing.

Compliance and Enforcement

Benefits resulting from the proposed amendments to the Act's protected areas provisions include:

- A simplified compliance and enforcement regime which will be easier and more cost effective to administer.
- An enforcement regime that is more flexible and provides a broader range of enforcement options.
- Strengthened and rationalised enforcement procedures including powers under warrants and powers of seizure.
- Broadened capacity for a court to grant rehabilitation orders.
- More efficient and effective administration and greater certainty through resolution of definitional and technical uncertainty and problems.

Costs resulting from the proposed amendments to the Act's protected areas provisions include:

- Implementation costs for the Australian Government.
- Minor costs associated with the need for stakeholders to become familiar with the new arrangements.

Compliance Costs

The proposed amendments to the compliance and enforcement provisions of the Act are not expected to cause any significant changes to compliance costs.

Benefits and Costs associated with not making amendments

The alternative to the amendments is to continue administration of the existing regime. The principal benefits of this option are that there are no implementation costs and stakeholders can continue to interact with a regulatory regime that they are familiar with. However, there are a range of potential costs associated with continuing with the current regime, including:

- Continuation of existing duplication, inefficiencies, lack of administrative flexibility and associated compliance costs for stakeholders.
- Continuation of administrative difficulties experienced by the administering Department.
- Less than optimal environmental outcomes resulting from lack of strategic approaches in relation to assessment of developments and recovery of protected species.
- Continuation of risks to the Australian Government associated with legal uncertainty and the inability to meet some statutory requirements.

Groups likely to experience benefits and costs and the extent to which they are impacted

Companies, Partnerships and Individuals

Companies, partnerships and individuals undertaking development actions or other actions with impacts on the environment are potentially affected by many of the problems with the existing Act including duplication of processes; inconsistency and lack of transparency; insufficient flexibility and scope; ambiguities, anomalies and lack of certainty and technical issues. All of these problems can increase compliance costs. The majority of the proposed amendments aim to better integrate, streamline or clarify the Act's processes and requirements, while maintaining a high level of protection for the environment. By clarifying the requirements of the Act, the amendments will assist these stakeholders in determining whether or not the Act applies to their activities. In circumstances where the Act does apply to the activities of a company, partnership or individual, compliance costs will be reduced by clarifying specific requirements or processes, reducing duplication of processes and reducing processing times.

There are a limited number of amendments that will slightly increase compliance costs for companies, partnerships or individuals. The proposed amendments include additional requirements for publication of documents by persons whose proposals are undergoing environmental assessment. The additional requirements aimed at increasing the transparency of processes are few in number and will not add substantially to the overall cost of undertaking environmental assessment. These additional costs will be far outweighed by the raft of measures in the proposed amendments aimed at reducing compliance costs.

The Australian Government

Australian Government agencies, who are regulated by the Act, are affected by many of the issues outlined above, including duplication of processes; inconsistency and lack of transparency; insufficient flexibility and scope; ambiguities, anomalies and lack of certainty and technical issues.

Amendments aimed at integrating, streamlining or clarifying the Act's requirements and processes, will reduce compliance costs for Australian Government agencies. Australian Government agencies would be affected by the proposed additional publication requirements outlined above, but any increase in compliance costs associated with these requirements will be outweighed by the raft of measures in the proposed amendments aimed at reducing compliance costs.

State and Local Governments

State and Local governments are affected by the problems outlined above and by the proposed solutions in two main capacities. State and Local governments, in conjunction with the Australian Government, are responsible for the protection and conservation of Australia's environment and heritage. State Government and Local Government bodies also undertake actions which may be subject to the regulatory requirements of the Act. The proposed amendments will increase the ability of the Australian Government to accredit State Government processes, increase the ability of State and Local Governments to participate in strategic approaches to the protection and conservation of the environment and heritage, and will increase the effectiveness of bilateral agreements with State Governments. In relation to State and Local Government development projects being subject to the requirements of the Act the amendments will reduce and timeframes

and increase certainty. The amendments would impose some temporary costs on State and Local Governments, arising from the need to understand and communicate the new arrangements.

Environmental Groups and the general public

Environmental groups and the general public are affected by the problems outlined above both, directly, as participants in the Act's processes, and through their interest in a continuing high level of protection for the environment and heritage. As participants in the Act's processes, environmental groups and the general public will generally be advantaged by the proposed measures to increase the transparency and certainty of the Act's provisions. The removal of the provision which does not require undertakings for damages as a condition of the Federal Court granting an interim injunction could potentially increase costs for environment groups which seek injunctions. However, even with the removal of the provision, the Federal Court still has the discretion to not require undertakings for damages. The proposed amendments reduce administrative and compliance costs, while maintaining a high level of protection for the environment and heritage. The proposed amendments will increase the effectiveness of compliance and enforcement provisions and provide greater protection for the environment through deterrence and more effective sanctions. As with other stakeholders environmental groups will incur temporary costs arising from the need to understand and communicate the new arrangements.

Distributional effects

There are limited costs associated with the proposed amendments and these will not have a disproportionate effect on any of the groups outlined above. The majority of the costs associated with the amendments arise from the implementation process, these costs are not substantial and most will be borne by the Department of the Environment and Heritage.

Data sources and assumptions used in making these assessments

As most of the amendments involve streamlining or integration of administrative processes, clarification of regulatory requirements or removal of technical difficulties, a qualitative assessment of costs and benefits was most appropriate. While costs and benefits are difficult to quantify it is clear that tangible benefits will result from the overall reduction and simplification of regulatory requirements.

CONSULTATION

Who are the main affected parties?

The main parties affected by the problem and its proposed solutions are industry, business and individuals, the Australian Government, including the Department of the Environment and Heritage, State and Territory governments, Local Government, and environmental groups.

What are the views of those parties?

Interactions with key stakeholders in the administration along with views they have expressed through various mechanisms have been the basis for many of the key amendments to the Act. These stakeholder groups include government representatives, industry groups, private individuals, environmental groups, and academic commentators.

The amendments also take account of the outcomes of number of audit and review reports.

In 2003 the Department commenced a review of the *EPBC Act Administrative Guidelines on Significance*. The review of the guidelines involved interviews of a broad range of stakeholders representing the Australian Government, State Governments, environmental consultants, environmental organisations, industry associations and proponents. Please see the attached list of interviewees. Comments were also invited generally from the public via public notices in newspapers and through the Department's web site. In addition to specific comments on the guidelines, interviewees were invited to comment generally on the operation of the Act.

Stakeholders raised a broad variety of issues which were generally very closely aligned with their interest areas. Some of the principal areas of comment which relate to the Act's regulatory framework and operation are listed below:

- Duplication between Commonwealth and State processes.
- Heritage provisions place onerous obligations on Commonwealth agencies.
- Need to ensure that accredited State processes are sufficiently rigorous.
- Areas of ambiguity.
- Need to follow up on conditions imposed on approvals.
- Need to take a strategic approach rather than focusing on daily management decisions.
- Need for broader capacity to approve strategies, plans, broad development projects.
- Influence of third party objectors.
- Length of time taken for assessment.
- Need to ensure ongoing protection for the environment after an approval is issued.
- The Act should focus on systems rather than on single species.

All of these issues are addressed in the proposed amendments.

The Department will communicate with a broader group of stakeholders once the broad amendment package has been settled.

Where consultation was limited or not undertaken, why was full consultation inappropriate?

The first six years of operation of the Act have involved a continuous dialogue with persons who have either been involved with or have an interest in its operation. The need for many of the amendments has been identified as a result of this dialogue. The amendments do not introduce new regulatory requirements. They streamline, simplify and clarify existing regulatory requirements. In this context, it is considered that the consultation which has been undertaken is adequate and sufficient.

CONCLUSION AND RECOMMENDED OPTION

Making the necessary legislative amendments to the Act is the only option that will enable delivery of the objectives outlined above. In addition, amending the Act as proposed will create a regulatory regime that is:

- More efficient and effective;
- Enhances strategic approaches to environmental assessment, protection and management;
- Removes the confusions and ambiguities that currently exist;
- Provides improvements in environmental outcomes.

The proposed changes have been developed as a result of experience in operating the Act, including input from stakeholders relating to difficulties with the existing legislative provisions.

The package of legislative and administrative changes proposed in the submission strikes a balance between making the operation of the Act more efficient and improving transparency and environmental outcomes. The measures are designed to optimise the operation of the Act according to the original objectives of the 1997 Council of Australian Governments Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment which provides the basis for key aspects of the Act.

IMPLEMENTATION AND REVIEW

The Department of the Environment and Heritage has commenced preparations for administrative implementation of the proposed amendments. The Department has also commenced preparation of information products which explain the amendments to external stakeholders. As most of the amendments involve the refinement of existing provisions, there is no need for implementation to be heavily staged.

The Act requires that the Minister for the Environment and Heritage cause independent reviews of the operation of, and achievements under, the Act to be undertaken within 10 years of commencement and at intervals of not more than 10 years after that.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 – Short title

1. This clause provides for the Act to be cited as the *Environment and Heritage Legislation Amendment Act (No.1) 2006*.

Clause 2 – Commencement

2. Paragraph 1 of the table in clause 2 provides that sections 1 to 3 commence on the day on which the Act receives Royal Assent.
3. Paragraph 2 of the table provides for items 1 to 606 in Schedule 1 to commence on a day or days to be fixed by Proclamation. If any of the provisions do not commence within the period 6 months beginning on the day on which the Act receives Royal Assent, they commence on the first day after the end of that period.
4. Paragraph 3 of the table provides for item 607 to commence at the end of the period of 5 years beginning on the day on which 505 of Schedule 1 commences.
5. Paragraph 4 of the table provides for items 608 to 780 in Schedule 1 to commence on a day or days to be fixed by Proclamation. If any of the provisions do not commence within the period 6 months beginning on the day on which the Act receives Royal Assent, they commence on the first day after the end of that period.
6. Paragraph 5 of the table provides for item 781 to commence immediately after the *Heritage of Western Australia Act 1990* starts to apply in the Territory of Christmas Island.
7. Paragraph 6 of the table provides for item 782 to commence immediately after the *Heritage of Western Australia Act 1990* starts to apply in the Territory of Cocos (Keeling) Islands.
8. Paragraph 7 of the table provides for items 783 to 807 in Schedule 1 to commence on a day or days to be fixed by Proclamation. If any of the provisions do not commence within the period 6 months beginning on the day on which the Act receives Royal Assent, they commence on the first day after the end of that period.
9. Paragraph 8 of the table provides for item 808 to commence at the end of the period of 5 years beginning on the day on which 550 commences.
10. Paragraph 9 of the table provides for items 809 to 835 in Schedule 1 to commence on a day or days to be fixed by Proclamation. If any of the provisions do not commence within the period 6 months beginning on the day on which the Act receives Royal Assent, they commence on the first day after the end of that period.
11. Paragraph 10 of the table provides for item 836 to commence at the end of the period of 5 years beginning on the day on which 550 commences.
12. Paragraph 11 of the table provides for item 837 in Schedule 1 to commence on a day to be fixed by Proclamation. If any of the provisions do not commence within the period 6 months beginning on the day on which the Act receives Royal Assent, they commence on the first day after the end of that period.

13. Paragraph 12 of the table provides for item 838 to commence at the end of the period of 5 years beginning on the day on which 550 commences.
14. Paragraph 13 of the table provides for items 839 and 840 in Schedule 1 to commence on a day or days to be fixed by Proclamation. If any of the provisions do not commence within the period 6 months beginning on the day on which the Act receives Royal Assent, they commence on the first day after the end of that period.
15. Paragraph 14 of the table provides for item 841 to 845 to commence at the end of the period of 5 years beginning on the day on which 550 commences.
16. Paragraph 15 of the table provides for Schedule 1 (items 846 to 869) to commence on a day or days to be fixed by Proclamation. If any of the provisions do not commence within the period 6 months beginning on the day on which the Act receives Royal Assent, they commence on the first day after the end of that period.
17. Paragraph 16 of the table provides for Schedule 2 to commence on a day on which this Act receives Royal Assent.

Clause 3 – Schedule(s)

18. This clause provides that each Act specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule, and other items in a Schedule has effect according to its terms.

Schedule 1 – Amendments

Part 1 – Amendments of the Environment Protection and Biodiversity Conservation Act 1999

Item 1 – After Section 5

19. This item amends the extraterritorial application of the Act for Commonwealth managed fisheries so that it aligns with the extra-territorial application in the *Fisheries Management Act 1991*. It will enable application of Act provisions consistently across a fishery managed under a management plan that covers an area that straddles the EEZ and high seas. For example, the export and import provisions of Part 13A of the Act will be extended so that fish caught outside the Australian jurisdiction, in Commonwealth fisheries managed under a statutory management plan by the Australian Fisheries Management Authority, will be treated the same as fish caught in the Australian jurisdiction within these fisheries. The amendment applies to fishing activities engaged in after the item commences (whether the relevant plan of management is in force under the *Fisheries Management Act 1991* before or after that time).

Items 2 and 3 – Section 7

20. These items are a consequence of the insertion of new section 498B into the Act.

Items 4, 5, 6, 7 and 8 – Section 15A

21. These items amend subsections 15A(1), (2) and (3) of the Act. They apply strict liability to the circumstance that a property is a declared World Heritage property. The intent of these amendments is to make it absolutely clear that the prosecution

does not have to show a person knew or was reckless as to the fact that a property was a declared World heritage property. These amendments also remove the reference to “recklessness” from subsection 15A(2). The reference is no longer necessary as the default element of reckless will automatically apply to the relevant circumstance of this subsection. Item 8 inserts a note at the end of subsection 15A(3) as a consequence of new section 496C which deals with criminal liability of landholders.

Items 9 and 10 – Section 15B

22. These items amend section 15B of the Act by repealing subsection 15B(7) and making required word changes to subsection 15B(8). These amendments are a consequence of the National Heritage List no longer applying to places outside the Australian jurisdiction.

Items 11 to 37 – Section 15C

23. These items amend section 15C of the Act. They provide for strict liability to apply in relation to the circumstances that a heritage value is a National heritage value and that a place is a National Heritage place. The intent of these amendments is to make it absolutely clear that the prosecution does not have to show a person knew or was reckless as to the fact that the heritage value was a National heritage value or that the place was a National Heritage place. References to recklessness are not reproduced in the newly made paragraphs. These references are no longer necessary as the default element of reckless will automatically apply to the relevant circumstance. Other amendments are required changes as a consequence of the National Heritage List no longer applying to places outside the Australian jurisdiction. Item 35 inserts a note at the end of subsection 15C(13) as a consequence of new section 496C of the Act.

Items 38 to 42 – Section 17B

24. These items amend subsections 17B(1) and (2) of the Act. They provide for strict liability to apply in relation to the circumstance that the wetland is a declared Ramsar wetland. The intent of these amendments is to make it absolutely clear that the prosecution does not have to show a person knew or was reckless as to the fact that the wetland was a declared Ramsar wetland. These amendments also remove the reference to “recklessness” from subsection 17B(2). The reference is no longer necessary as the default element of reckless will automatically apply to the relevant circumstance of this subsection. Item 42 inserts a note at the end of subsection 17B(3) as a consequence of new section 496C of the Act.

Items 43 to 47 – Section 18A

25. These items amend subsections 18A(1) and (2) of the Act. They provide for strict liability to apply in relation to the circumstance that the species is a listed threatened species or an ecological community is a listed threatened ecological community. The intent of these amendments is to make it absolutely clear that the prosecution does not have to show a person knew or was reckless as to the fact that the list existed and that the particular species or community was on the list. These amendments also remove the reference to “recklessness” from subsection 18A(2). The reference is no longer necessary as the default element of reckless will automatically apply to the relevant circumstance of this subsection. Item 47 inserts a note at the end of subsection 18A(3) as a consequence of new section 496C of the Act.

Item 48 – At the end of section 19

26. This item inserts a new subsection 19(4) into the Act which provides that sections 18 or 18A, concerning civil penalties and criminal offences in relation to listed threatened species and communities, do not apply to an action that is covered by subsection 517A(7) of the Act which deals with non-contravention of offence and penalty provisions if an exemption to introduce a threatened species into particular areas is in force.

Items 49 to 53 – Section 20A

27. These items amend subsections 20A(1) and (2) of the Act. They provide for strict liability to apply in relation to the circumstance that the species is a listed migratory species. The intent of these amendments is to make it absolutely clear that the prosecution does not have to show a person knew or was reckless as to the fact that the list existed and that the particular species was on the list. These amendments also remove the reference to “recklessness” from subsection 20A(2). The reference is no longer necessary as the default element of reckless will automatically apply to the relevant circumstance of this subsection. Item 53 inserts a note at the end of subsection 20A(3) as a consequence of new section 496C of the Act.

Item 54 – At the end of Subdivision D of Division 1 of Part 3

28. This item inserts a new section 20B into the Act. This amendment provides that sections 20 or 20A, concerning civil penalties and criminal offences in relation to listed migratory species, do not apply to an action that is covered by subsection 517A(7) of the Act.

Item 55 – At the end of subsection 22A(7)

29. Item 55 inserts a note at the end of subsection 22A(7) as a consequence of new section 496C of the Act.

Item 56 – At the end of section 24

30. This item amends section 24 of the Act by inserting a new paragraph 24(g) to the definition of Commonwealth marine area. This is to extend the definition to include areas of sea or seabed included in a Commonwealth reserve into the definition of Commonwealth marine area, making the definition consistent with the definition of Commonwealth area in section 525 of the Act.

Items 57 to 67 – Section 24A

31. These items amend subsections 24A(1) to (6) of the Act. They provide for strict liability to apply in relation to the circumstance that an area is a Commonwealth marine area. The intent of these amendments is to make it absolutely clear that the prosecution does not have to show a person knew or was reckless as to the fact that the area is a Commonwealth marine area. References to recklessness are not reproduced in the newly made paragraphs. These references are no longer necessary as the default element of reckless will automatically apply to the relevant circumstance. Item 67 inserts a note at the end of subsection 24A(7) as a consequence of new section 496C.

Item 68 – Section 25AA

32. This item inserts new section 25AA into the Act which creates a new defence to the offence provisions in Part 3 of the Act. The purpose of this amendment is to ensure that a person cannot be prosecuted (or a civil penalty imposed) under Division 1 of Part 3 of the Act for impacts caused by actions of third parties which are consequential to the actions of the first person but which are not directed or requested by the first person. Where a third party takes an action without an approval which has significant impacts on a matter protected by Part 3 they may be prosecuted (or a civil penalty imposed) directly under Division 1 of Part 3 of the Act.

Item 69 – Subsection 25B(3)

33. This item amends section 25B of the Act by inserting a reference in subsection 25B(3) to section 480A and section 480K of the Act, as a consequence of item 774. This amendment allows for evidentiary certificates to be issued even if proceedings have been instituted for a remediation order under section 480A or to have a remediation determination set aside under section 480K of the Act.

Item 70 – Subsection 25D(1)

34. This item amends section 25D of the Act by inserting a reference in subsection 25D(1) to sections 480A and 480K of the Act, as a consequence of item 774. This amendment allows for evidentiary certificates to be prima facie evidence of the matters in the certificate in any proceedings instituted for a remediation order under section 480A or to have a remediation determination set aside under section 480K.

Items 71 to 78 – Section 27A

35. These items amend subsections 27A(1) to (4) of the Act. They provide for strict liability to apply in relation to the circumstance that an area is Commonwealth land. The intent of these amendments is to make it absolutely clear that the prosecution does not have to show a person knew or was reckless as to the fact that the area is Commonwealth land. References to “recklessness” are not reproduced in the newly made paragraphs. These references are no longer necessary as the default element of reckless will automatically apply to the relevant circumstance. Item 78 inserts a note at the end of subsection 27A(5) as a consequence of new section 496C.

Items 79 to 82 – Subsections 27C(1) and (2)

36. These items amend subsections 27C(1) and (2) of the Act. They provide for strict liability to apply in relation to the circumstance that a place is a Commonwealth Heritage place. The intent of these amendments is to make it absolutely clear that the prosecution does not have to show a person knew or was reckless as to the fact that the place is a Commonwealth Heritage place. These amendments also remove the reference to ‘recklessness’ from subsection 27C(2). The reference is no longer necessary as the default element of reckless will automatically apply to the relevant circumstance of this subsection.

Item 83 – Subsection 28(5)

37. This item amends subsection 28(5) of the Act, which provides the grounds upon which the Minister may make a declaration that actions taken by a Commonwealth agency are actions to which section 28 of the Act does not apply. This amendment is to make it clear that a law of a State or Territory with which the Commonwealth agency must comply provides adequate protection for the environment.

Item 84 – At the end of Division 2 of Part 3

38. This item inserts a new section 28AB into the Act which complements new section 25AA. This amendment is to ensure that a person cannot be prosecuted (or a civil penalty imposed) under Division 2 of Part 3 of the Act for impacts caused by actions of third parties which are consequential to the actions of the first person but which are not directed or requested by the first person. Where a third party takes an action without an approval which has significant impacts on a matter protected by Part 3 they may be prosecuted (or a civil penalty imposed) directly under Division 2 of Part 3 of the Act.

Item 85 – Division 3 of Part 3

39. This item repeals Division 3 of Part 3 of Chapter 2 of the Act which contained section 28A of the Act. This amendment removes the requirement that the Minister, every five years, prepare a report into whether further matters of national environmental significance should be added to the Act. Section 25 of the Act still enables new matters of national environmental significance, through the making of Regulations, to be protected. In addition, Part 3 of the Act can be amended in the normal manner to prohibit or regulate additional actions that have, will have or are likely to have a significant impact on environmental matters that may properly be regarded as being of national environmental significance.

Items 86 and 87 – Section 29

40. These items amend section 29 of the Act as a consequence of amendments to section 46 of the Act which is dealt with in items 131 to 152.

Items 88 to 91 – Section 31

41. These items amend section 31 of the Act as a consequence of amendments to section 46 of the Act (see items 131 to 152).

Item 92 – Division 2 of Part 4 (heading)

42. This item repeals the heading for Division 2 of Part 4 of the Act and replaces it with a new heading which also refers to accredited management arrangements and accredited authorisation process.

Items 93 to 95 – Section 32

43. These items amend section 32 of the Act as a consequence of amendments to section 33 of the Act (see items 96 to 114).

Items 96 to 114 – Section 33

44. These items amend section 33 of the Act to insert new references to an “accredited management arrangement” and an “accredited authorisation process” in place of the previous reference to an “accredited management plan.” Previously the Minister could declare that actions approved by the Commonwealth or a particular Commonwealth agency, in accordance with an accredited management plan, do not require approval under Part 9 of the Act. The amendment allows the Minister to make a section 33 declaration in relation to a broader range of accredited management arrangements and processes under section 33. Subsection 33(2) is amended to insert definitions of an “accredited management arrangement” and an “accredited authorisation process”.
45. Subsection 33(5) is amended to allow the Minister to accredit a management arrangement or authorisation process if: the management arrangement or

authorisation process has been tabled in Parliament for a period of 15 sitting days; and, a notice of motion to oppose accreditation has been given; and, the notice of motion is withdrawn or otherwise disposed of within the 15 sitting days after it is given. Previously, the Minister could not accredit before the expiry of the 15 sitting days after a notice of motion to oppose accreditation was given (whether or not the notice was withdrawn or otherwise disposed of).

Items 115 to 118 – Section 34B to 34F

46. These items amend section 34B to 34F of the Act as a consequence of amendments to section 33 of the Act (see items 96 to 114). The amendments also insert new paragraph 34D(1)(c) and subsection 34D(2) which require the Minister to have regard to approved conservation advice when making declarations provided for by section 34D in relation to listed threatened species and ecological communities.

Item 119 – Paragraphs 35(2)(a) and (b)

47. This item amends section 35(2) of the Act to clarify that if the Minister revokes a declaration made under section 33 under section 35(1), then only those actions which have been taken and not completed before the revocation continue to be covered by the declaration.

Item 120 – Section 36

48. This item amends section 36 of the Act as a consequence of amendments to section 33 of the Act.

Item 121 – At the end of Subdivision D of Division 2 of Part 4

49. This item adds a new section 36A to the Act which provides for minor amendments to management arrangements or authorisation processes that are accredited under section 33. Where such a management arrangement or authorisation process is amended or proposed to be amended, the Minister may make a determination that a management arrangement or authorisation process as amended is taken to be an accredited management arrangement or authorisation process for the purpose of the Act. The Act then applies to the amended arrangement or process instead of the original arrangement or process. The Minister can only make a determination under section 36A if satisfied that the amendments are, or will be, minor, and meet the requirements in paragraphs 33(3)(a), (b) and (c). Subsection 36A(4) assists readers by confirming that a determination under 36A(1) is not a legislative instrument. Such a determination is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 122 – After Division 2 of Part 4

50. This item inserts new Division 3 of Part 4 of the Act. This amendment is to provide an incentive for those with an interest in a Commonwealth area, to have certain actions considered within the context of developing bioregional plans. If a bioregional plan provides for the taking of certain actions then under section 37A of the Act the Minister may declare that an action or class of actions taken in accordance with a bioregional plan do not require approval under Part 9 of the Act. The Minister may only make a declaration under section 37A if satisfied that the taking of the relevant action or actions will not have unacceptable or unsustainable impacts on a matter protected by a controlling provision in Part 3 of the Act for which the declaration has effect and if satisfied that the declaration accords with the objects of the Act and is not inconsistent with Australia's obligations under specified international treaties.

51. This provision creates an exemption from the offence provisions in Part 3 of the Act. The onus of proof is reversed in relation to these offence provisions. This means that a defendant who wishes to rely upon this exemption bears the onus of proof in establishing that the exemption applies to their actions. The onus of proof is reversed because the defendant has a unique capacity to establish the matters in section 37A.
52. The amendments also insert new section 37M into the Act as a consequence of new section 306A, which provides that a conservation agreement may declare that actions in a specified class do not require approval under Part 9 of the Act.

Items 123 to 128 – Section 43A

53. These items amend section 43A of the Act which provides that certain actions which were specifically authorised before the commencement of the Act do not require approval under Part 9 of the Act. The purpose of these amendments is to clarify that in order for section 43A to apply to an action the action must have been authorised under a *specific* environmental authorisation which relates to that particular action (by reference to acts and matters uniquely associated with that action) and not types, groups, or classes of actions. For example, in relation to an action involving vegetation clearance, an environmental authorisation which authorised all persons, or a class of persons, to undertake vegetation clearance in the general area in which the action is proposed to be taken would not be a specific environment authorisation for the purposes of section 43A. Further, the amendments clarify that section 43A only applies to an action which was authorised by a specific authorisation before the commencement of the Act, if the relevant authorisation is still in force.

Items 129 and 130 – Section 43B

54. These items amend section 43B of the Act to make it clear that the continuing use exemption under section 43B does not apply to an action comprising a use of land, sea or seabed, if there is a change in the location of, or a 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. The amendments also clarify that the continuing use exemption does not apply where an action was authorised by a specific environmental authorisation before the commencement of the Act (these actions are covered by section 43A).

Item 131 to 152 – Section 46

55. These items amend section 46 of the Act to insert new references to a “bilaterally accredited management arrangement” and a “bilaterally accredited authorisation process” in place of previous references to a “bilaterally accredited management plan.” Previously a bilateral agreement could declare that actions approved by a State or self-governing territory, in accordance with an accredited management plan, do not require approval under Part 9 of the Act.
56. The amendment allows a bilateral agreement to make a declaration in relation to a broader range of accredited management arrangements and processes under section 46. Subsection 46(2) is amended to insert definitions of a “bilaterally accredited management arrangement” and a “bilaterally accredited authorisation process”. Subsection 46(5) is amended to allow the Minister to accredit a management arrangement or authorisation process if: the management arrangement or

authorisation process has been tabled in Parliament for a period of 15 sitting days; and, a notice of motion to oppose accreditation has been given; and, the notice of motion is withdrawn or otherwise disposed of within the 15 sitting days after it is given. Previously, the Minister could not accredit before the expiry of the 15 sitting days after a notice of motion to oppose accreditation was given (whether or not the notice was withdrawn or otherwise disposed of). Subsection 46(10) is amended to insert a reference to a bilaterally accredited management arrangement in the place of the previous reference to bilaterally accredited management plans. The requirements in this section are not relevant to authorisation processes.

Items 153 and 154 – Section 51

57. These items amend section 51 of the Act as a consequence of amendments to section 46 of the Act.

Items 155 and 156 – Section 51A

58. These items amend section 51A of the Act as a consequence of amendments to section 46 of the Act.

Items 157 and 158 – Section 52

59. These items amend section 52 of the Act as a consequence of amendments to section 46 of the Act.

Items 159 to 162 – Section 53

60. These items amend section 53 of the Act by inserting additional subsections 53(1)(ca) and 53(2)(d) into the Act and making required word changes. These amendments require the Minister to have regard to approved conservation advice when deciding whether to enter into agreements provided for by section 53 in relation to listed threatened species and ecological communities. This amendment is required as a consequence of item 469 which deals with the preparation of conservation advice for threatened species and ecological communities. The word changes are a consequence of amendments to section 46 of the Act.

Items 163 and 164 – Section 54

61. These items amend section 54 of the Act as a consequence of amendments to section 46 of the Act.

Item 165 – Section 55

62. This item amends section 55 of the Act as a consequence of amendments to section 46 of the Act.

Item 166 – At the end of Division 2 of Part 5

63. This item inserts new section 56A into the Act. This amendment is to simplify the process for remaking bilateral agreements where only minor amendments are involved. If the Minister is satisfied that the amendments will not have a significant effect on the previous bilateral agreement, he or she may make a determination remaking the agreement. Subsection 56A(3) confirms that a determination under 56A(1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 167 – Subsection 64(2)

64. This item amends subsection 64(2) of the Act as a consequence of amendments to section 46.

Items 168 and 169 – Section 65

65. These items amend section 65 of the Act to provide for a Bilateral Agreement to have effect for a period specified in the Agreement, rather than cease to have effect within 5 years. This will provide increased certainty, particularly in relation to large-scale developments which will operate for periods of time in-excess of 5 years. The new provisions require the Minister to cause a review of a Bilateral Agreement to be carried at least once every 5 years, with the review report required to be published.

Item 170 – Subsection 65A(2)

66. This item amends subsection 65A(2) of the Act as a consequence of amendments to section 46 of the Act.

Item 171 – After paragraph 66(c)

67. This item amends section 66 of the Act by inserting a new paragraph 66(ca) into the Act. This amendment clarifies that an assessment may be done using information included in the referral and is required as a consequence of item 217.

Item 172 – Section 67

68. This item amends section 67 of the Act and is required as a consequence of new sections 25AA and 28AB.

Item 173 – After section 67

69. This item inserts a new section 67A into the Act. This amendment is required as a consequence new sections 25AA and 28AB and amendments to section 67 of the Act. The effect of the amendment to section 67 is that an action that would be prohibited under Part 3 of the Act apart from the operation of sections 25AA or 25AB is, nevertheless, a controlled action. A person is required to refer a controlled action to the Minister under section 68. If a person fails to refer a controlled action to the Minister and takes the action without approval under Part 9 of the Act the action is prohibited under Part 3 (unless it falls within section 25AA or 28AB). The purpose of section 67A is to ensure that an injunction can be sought to prevent a person from taking an action which is a controlled action but which is not prohibited because of section 25AA or 28AB.

Items 174 – At the end of section 68

70. This item amends section 68 of the Act and is required as a consequence of item 175.

Item 175 – After section 68

71. This item inserts a new section 68A into the Act. This amendment is to clarify that a contractor or another person who takes an action on behalf of a principal pursuant to a contract, agreement or arrangement, is not required and not permitted to make a referral under section 68. The purpose of this amendment is to prevent a principal from avoiding responsibilities under the Act by requiring a contractor or other person to refer the action instead of the principal.

Item 176 – Subsection 70(7)

72. This item repeals subsection 70(7) of the Act and is required as a consequence of item 183.

Item 177 – Subsection 71(1)

73. This item removes the words ‘(except the Minister)’ from subsection 71(1) of the Act. This amendment is to allow areas of the Department of the Environment and Heritage to make referrals under the Act of actions being taken by other persons in order to better integrate the various environmental impact assessment responsibilities of the Minister.

Item 178 – At the end of section 72

74. This item amends section 72 of the Act by inserting a new subsection 72(3) into the Act. This amendment allows a person to refer a number of alternative proposals for taking an action which may consist of alternative locations, timeframes and/or activities. The purpose of this amendment is to provide greater flexibility in the planning stage of a proposed action and to facilitate better environmental outcomes by allowing the relative impacts of different options to be considered.

Items 179 to 183 – Section 74

75. These items amend section 74 of the Act. New subsections 74(1A) and (1B) provide for the Minister to be able to seek advice from the Australian Heritage Council on an action that is the subject of a proposal referred to the Minister. This item is a consequence of amendments to sections 341ZD and 341ZF of the Act which are dealt with in items 579 and 580. In addition to seeking comments on whether a proposed action should be a controlled action, this amendment also requires the Minister to seek information from relevant State and Territory Ministers as to the appropriate assessment approach that should be employed in assessing a proposed action. This will facilitate the process of making a decision on assessment approach at the same time as the controlled action decision (where possible) which is dealt with in item 211.
76. New subsection 74(3A) allows the Minister to withhold commercial-in-confidence information when publishing a referral under section 74(3) if satisfied of the matters in section 74(3B) of the Act. Subsection 74(4) of the Act is deleted for purposes of increased transparency and consistency. As a result of this deletion all referrals will now be required to be published for public comment whether or not the person has indicated in the referral that the action is a controlled action.

Item 184 – At the end of Division 1 of Part 7

77. This item inserts a new section 74AA into the Act. Subsection 74AA(1) creates a fault based offence of taking an action that is the subject of a referral prior to a controlled action decision being made, or prior to the making of an approval decision for the referral. The maximum penalty is 500 penalty units. An exception to the offence is created where the action is reasonably necessary in order to comply with a requirement under the Act, for example, a requirement to provide particular information in an environmental impact statement under Part 8. Subsection 74AA(3) creates a separate offence where a person takes an action and a referral has been requested by the Minister under section 70 of the Act but not yet made. The maximum penalty is also 500 penalty units.

Item 185 – After Division 1 of Part 7

78. This item inserts new Division 1A of Part 7 of the Act. Division 1A establishes a new process that allows the Minister to make a prompt refusal for an action that would have unacceptable impacts on a matter protected by Part 3 of the Act. This avoids the expense and time involved in conducting the full assessment and approval process under Chapter 4 for actions that would be unlikely to receive approval under Part 9 of the Act. The scope and process for making a prompt refusal is established in three new sections of the Act – 74B, 74C, and 74D.
79. If the Minister considers that an action would have unacceptable impacts on a matter protected under Part 3 of the Act on the basis of the information contained in a referral then the Minister may decide under section 74B that Division 1A applies to the action. The other provisions of Chapter 4 (referral assessment and approvals processes) then cease to apply to the action. Under section 74C the Minister must then notify the person proposing to take the action and provide reasons why the action is unacceptable. The person may withdraw the referral, withdraw the referral and refer a new proposal, or request the Minister to reconsider the referral.
80. New section 74D outlines the process to be followed in the event the Minister is asked to reconsider the referral. At the completion of this process the Minister may either confirm that the action is not to be approved, or determine that it should be subject to the formal assessment and approvals processes under the Act. If the Minister decides that the referral should be assessed, the Chapter 4 processes and timeframes recommence at the point where they were initially stopped under section 74B of the Act.

Items 186 to 191 – Section 75

81. These items amend section 75 of the Act by inserting new subsections 75(2A) and 75(2B) and making other minor changes. New subsection 75(2A) clarifies the application of the Act in relation to actions proposed to be taken partly in and partly outside Commonwealth areas. For the purposes of deciding whether or not such an action requires approval for the purposes of National Heritage places, Commonwealth marine areas and Commonwealth land, the Minister may consider only those impacts of that part of the action that is taken in or on Commonwealth land, a Commonwealth marine area or a Commonwealth area.
82. New subsection 75(2B) is to clarify that in making a controlled action decision, in relation to proposed developments, such as, a factory which will use timber from an RFA region, the Minister must not consider any adverse impacts of any RFA forestry operation (as defined in section 38) or a forestry operation in an RFA region (as defined in section 40). Sections 38 and 40 of the Act exempt RFA forestry operations and forestry operations in RFA regions from the need for approval under the Act. If these sections do not apply because of section 42 then new section 75(2A) inserted by this item also does not apply. The amendment to 75(5) is consequential to the amendment of section 74(4) by item 183 which establishes consistent publication requirements and timeframes for all referrals. The note inserted by item 190 notifies that, if the Minister decides that an action is a controlled action (and requires approval under Part 9) under section 75, then, unless the Minister requests further information, the Minister must decide on the approach to be used for assessing the action under section 87 on the same day.

Items 192 and 193 – Section 76

83. These items amend section 76 of the Act by inserting new subsections 76(2), 76(3), 76(4) and 76(5) into the Act. The amendments enable the Minister to request information from a person proposing to take an action which has been referred to the Minister.
84. Under subsection 76(2) the Minister may request information about whether the action is a component of a larger action to be undertaken by the proponent (see section 74A). Under subsections 76(3) and 76(4) the Minister may request further information to allow an informed decision about the appropriate level of assessment (which can now be made at the same time as the controlled action decision) including information about the method and stage of assessment in the relevant State or Territory (as appropriate). These requests can be made even if the proposal has not yet been determined to be a controlled action.

Item 194 – Subsection 77A(1)

85. These items amend section 77A of the Act as a consequence of amendments to other sections of the Act. Subsection 77A(1) has also been restructured so that it reads more clearly.

Item 195 – Before section 78

86. This item establishes a new Division 3 of Part 7 of the Act. Division 3 contains a new process for handling a request for reconsideration of a decision by the Minister under section 75 (whether or not an action is a controlled action).

Items 196 and 197 – Section 78

87. These items restructure section 78 of the Act so that it reads more clearly, insert subsection 78(1)(ba) to correct an omission insert subsection 78(1)(ca) as a consequence of new section 37A and insert three new notes at the end of subsection 78(1).

Item 198 – After section 78

88. This item inserts new sections 78A, 78B and 78C into the Act to provide a process for handling requests by persons, other than State or Territory Ministers (see section 79), for the reconsideration under section 78 of a decision by the Minister under section 75 whether or not an action is a controlled action. The purpose of this amendment is to provide greater transparency in relation to the reconsideration of section 75 decisions, by including formal consultation requirements.

Item 199 – Subsections 79(1) and (2)

89. This item amends subsections 79(1) and (2) of the Act. The amendment of subsection 79(1) is consequential to the deletion of 74(4) by item 183 which establishes consistent publication requirements and timeframes for all referrals. The amendment to subsection 79(2) extends the period in which a reconsideration request can be made from 5 to 10 business days and clarifies that time period commences when the *appropriate* Minister of the relevant State or Territory is notified.

Item 200 – After paragraph 80(a)

90. This item amends section 80 of the Act by inserting new paragraph 80(aa) and is required as a consequence of the insertion of new Division 3A.

Items 201 and 202 – Section 82

91. This item inserts new subsection 82(4) into the Act. This amendment clarifies the application of the Act in relation to actions proposed to be taken partly in and partly outside Commonwealth areas. For the purposes of assessment of such an action in accordance with Part 8 of the Act for the purposes of 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 26(1) or 27A(1) (National Heritage places, Commonwealth marine areas and Commonwealth land) the relevant impacts are those impacts of that part of the action that is taken in or on a Commonwealth area. The amendment to subsection 82(2) is a consequence of new Divisions 3 and 3A of Part 4 of the Act by item 122.

Item 203 – After paragraph 85(a)

92. This item amends section 85 of the Act by inserting a new paragraph 85(aa) and is required as a consequence of the insertion of new Division 3A.

Item 204 – Section 86

93. This item repeals section 86 of the Act. This amendment removes the need for proponents to provide the Minister with preliminary information to inform the decision on the assessment approach under section 87 once an action has been determined to be a controlled action under section 75. Preliminary information largely duplicated information in the referral document and did not add much value to the process. In order to streamline the referral and assessment and approval processes, the level of assessment decision will now be made based on the information in the referral documentation and this decision will be made at the same time as the controlled action decision (see items 211 and 212).

Items 205 to 210 – Section 87

94. These items amend section 87 of the Act by amending subsections 87(1) and 87(3), repealing subsection 87(2), and inserting paragraph 87(1)(a) and subsection 87(4A). Subsection 87(2) required the Minister to seek comments from relevant State and Territory Ministers about the appropriate level of assessment for a controlled action. This requirement is now incorporated into the new subsection 74(2) (see item 180). The purpose of new subsection 87(4A) is to allow the regulations to specify criteria which specify the circumstances in which assessment on referral information (see item 217) is appropriate. New paragraph 87(1)(aa) is required as a consequence of the insertion of new Division 3A by item 217.

Items 211 to 213 – Section 88

95. These items amend section 88 of the Act by amending subsections 88(1), 88(2) and 88(4) and repealing subsection 88(3). The purpose of these amendments is to streamline the referrals, assessments and approvals process by requiring the Minister to determine the appropriate level of assessment for controlled actions within 20 business days of receiving a referral (unless further information is required). Previously, the level of assessment decision was made 20 business days after the receipt of preliminary information which was typically received some time after the controlled action decision. The amendments to subsection 88(4) are a consequence of items 192 and 193.

Items 214 and 215 – Section 89

96. These items amend section 89 of the Act by inserting new subsections 89(2) and 89(3) into the Act. These amendments clarify the type of information the Minister may request from a proponent to allow an informed decision about the appropriate level of assessment.

Item 216 – Section 91

97. This item amends section 91 of the Act by amending subparagraph 91(1)(a)(i) and inserting subparagraph 91(1)(a)(ia). This amendment is consequential to the amendment of section 81 by items 211 and 212. It will be possible to make the notification about the level of assessment at the same time as notification of the controlled action decision where both decisions have been made at the same time.

Item 217 – Division 4 of Part 8

98. This item repeals Division 4 of Part 8 and substitutes new Divisions 3A and 4 of the Act. The purpose of this amendment is to increase the efficiency and flexibility of the Act by establishing a new level of assessment called “assessment on referral information”, and refining the processes for assessment on preliminary documentation.
99. New Division 3A establishes a process for assessing a proposed action that involves a small number of straight forward environmental issues. The purpose of this amendment is to streamline the Chapter 4 referral, assessment and approval process for actions which involve straightforward and well-understood impacts on matters of national environmental significance.
100. New Division 4 streamlines and increases the transparency of assessment on preliminary documentation. Assessment on preliminary documentation is appropriate for actions that involve more complex environmental issues than those to be assessed on referral information, but still involve relatively straight forward issues.
101. New section 95 applies to those actions that are suitable for assessment on preliminary documentation based on the information contained in the referral. This amendment encourages proponents to provide adequate information for assessment at the time of referral to take advantage of a reduced timeframe for assessment.
102. New section 95A applies to those actions that are suitable for assessment on preliminary documentation but require further information to assess the relevant impacts. If additional information to that contained in the referral is required, the Minister must request the proponent to provide specified information, which may include information about mitigation strategies. Subsections 95(4), 95A(5) confirm that a written direction by the Minister under subsections 95(2), or 95A(3) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.
103. New section 95B increases the transparency of assessment on preliminary documentation by bringing consultation and publication requirements into line with other levels of assessment.

104. New section 95C requires the Secretary to prepare a recommendation report relating to the action to provide to the Minister for consideration in deciding whether or not to approve the action and under what conditions. The recommendation report replaces the previous assessment report and further streamlines the assessment and approval processes by combining the assessment report and recommendations on approval and any proposed conditions in a single document.

Item 218 – After section 96

105. This item inserts new sections 96A and 96B into the Act. This amendment is to streamline assessment by public environment report by allowing the Minister to give a proponent either standard or tailored guidelines for the development of the assessment documentation. Standard guidelines may be prepared to cover common categories of actions or particular protected matters, and tailored guidelines may be used where standard guidelines are not available or for more complex issues. Subsection 96B(4) confirms that standard guidelines prepared under section 96B(1) are not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Items 219 to 224 – Section 97

106. These items amend section 97 of the Act by changing the heading of the section to “Tailored guidelines,” and repealing subsection 97(1) and substituting a new subsection 97(1) into the Act. This amendment clarifies that the Minister must prepare tailored guidelines for the preparation of a public environment report if standard guidelines are not determined to be appropriate. The amendments also replace the words “the guidelines” with “tailored guidelines” throughout the section and insert a new subsection 97(6) which clarifies that tailored guidelines are not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Items 225 to 229 – Section 98

107. These items amend section 98 of the Act as a consequence of items 218, 219 and 230. The amendments clarify that the proponent must prepare a draft public environment report that addresses the issues in the guidelines (standard or tailored). The items also clarify that public comments on public environment reports must be made in writing.

Item 230 – Sections 99 and 100

108. This item amends sections 99 and 100 of the Act. New section 99 outlines the process for finalising a public environment report. In addition to publishing and providing the Minister with revised documentation based on public comments (if any), this amendment increases transparency by requiring a finalised Public Environment Report to contain a summary of public comments received during consultation on the draft report.
109. New section 100 requires the Secretary to prepare a recommendation report relating to the action to provide to the Minister for consideration in deciding whether or not to approve the action and under what conditions. The recommendation report replaces the previous assessment report and further streamlines the assessment and approval processes by combining the assessment report and recommendations on approval and any proposed conditions in a single document.

Item 231 – After section 101

110. This item inserts two new sections 101A and 101B into the Act. This amendment is to streamline assessment by environmental impact statement by allowing the Minister to give a proponent either standard or tailored guidelines for the development of the assessment documentation. Standard guidelines may be prepared to cover the usual types of actions or impacts that may be assessed, and tailored guidelines may be used where standard guidelines are not available or for more complex issues.
111. New section 101A requires the Minister to provide a proponent with written guidelines (standard or tailored) for the content of a draft environmental impact statement. In deciding if standard guidelines are appropriate the Minister must seek to ensure the environmental impact statement will adequately address the impacts of the action and meet the requirements of the regulations (if any).
112. New section 101B provides for the preparation of standard guidelines for environmental impact statements. While not limited to these matters, standard guidelines can be prepared for actions that are proposed to be taken by a specified industry sector, for assessments of impacts on a particular matter of national environmental significance, or for particular categories of actions. Standard guidelines are not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Items 232 to 237 – Section 102

113. These items insert new heading “tailored guidelines” and amend section 102 of the Act. The amendments apply the section to tailored guidelines. The amendments require the Minister to prepare tailored guidelines for the preparation of an environmental impact statement if standard guidelines are not appropriate. Subsection 102(6) confirms that tailored guidelines prepared under section 102(1) are not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Items 238 to 242 – Section 103

114. These items amend section 103 of the Act as a consequence of items 231, 232 and 243. The amendments clarify that the proponent must prepare a draft environmental impact statement that addresses the issues in the guidelines (standard or tailored). The items also clarify that public comments on environmental impact statements must be made in writing.

Item 243 – Sections 104 and 105

115. This item amends sections 104 and 105 of the Act. New section 104 outlines the process for finalising an environmental impact statement. In addition to publishing and providing the Minister with revised documentation based on public comments (if any), this amendment increases transparency by requiring a finalised Environmental Impact Statement to contain a summary of public comments received during consultation on the draft report. New section 105 requires the Secretary to prepare a recommendation report relating to the action to provide to the Minister for consideration in deciding whether or not to approve the action and under what conditions. The recommendation report replaces the previous assessment report and further streamlines the assessment and approval processes by combining the assessment report and recommendations on approval and any proposed conditions in a single document.

Items 244 to 249 – Section 130

116. These items amend section 130 of the Act. These amendments are largely consequential to the closer integration of the Chapter 4 assessment and approvals processes and other amendments streamlining the assessment and approvals processes. Section 130(1B) identifies the timeframes in which the Minister must make an approval decision for the various assessment approaches.
117. The previous requirement for a notice from a State or self-governing Territory stating that the impacts of the relevant action on things other than matters protected by the controlling provisions for the action have been assessed to “the greatest extent practicable”, has been replaced by provision in new section 132A for the Minister to request a notice stating “the method that has been used” to assess the impacts of the relevant action on things other than matters protected by the controlling provisions. The timeframes in which the Minister must make an approval decision have been de-linked from the timing of receipt of a notice from a State or Territory to provide the Minister with the ability to make an approval decision in the absence of a notice from a State or Territory.

Item 250 – Subsection 131(1)

118. This item amends subsection 131(1) of the Act as a consequence of item 244.

Item 251 – After section 131

119. This item inserts new sections 131AA and 131A into the Act. New section 131AA is to provide certainty in relation to the application of the natural justice hearing rule to approval decisions under section 133. Before making an approval decision, the Minister must provide a proponent of an action with the opportunity to comment on the Minister’s proposed approval decision and conditions. Where the Minister proposes to refuse an action, the proponent must also be supplied with information relevant to the decision. New section 131A is to increase transparency and improve decision-making under the Act. It allows the Minister to seek public comment on proposed approval decisions and conditions.

Item 252 – Section 132

120. These items amend section 132 of the Act by inserting a new paragraphs 132(1)(d) and 132(1)(e) and the making of other consequential amendments. These amendments broaden the Minister’s ability to request information in order to make an approval decision. In addition to requesting information from the person proposing to take the action, the designated proponent or a commission, this amendment allows the Minister to request information from the appropriate State or Territory Minister (when relevant) or any other person the Minister considers appropriate.

Item 253 – After section 132

121. This item inserts a new section 132A into the Act. This amendment is consequential to the amendment of section 130(1B) by item 244.

Items 254 to 263 – Section 133

122. Items 254 and 263 amend section 133 of the Act by replacing reference to assessment report with assessment documentation and inserting a definition of assessment documentation by reference to documentation produced under the various assessment approaches in provide for by Part 8 of the Act. These amendments are consequential to items 217, 230 and 243 and other amendments to the Part 8 assessment processes. Item 262 repeals subsections 133(5) and 133(6).

This amendment is consequential to the amendment of section 130(1B) by item 244 and removes the requirement for receipt of a notice from a State or self-governing Territory regarding their assessment of an action (see section 132A) before the Minister can approve the action. Items 255 and 256 are consequential to item 178 and allow the Minister to approve one or more alternative proposals in relation to the taking of an action. Item 260 inserts new subsection 133(2A) which clarifies that both the holder of an approval and persons carrying out actions on behalf of the holder are covered by the approval. Items 257 and 261 are consequential to Item 260 which distinguishes between the holder of an approval and persons, authorised, permitted or requested by the holder of the approval to take the relevant action. Item 258 amends paragraph 133(2)(f) as a consequence of the insertion of new 134(1A) by item 264.

Items 264 to 277 – Section 134

123. Item 273 inserts new paragraph 134(3)(h) into the Act which allows the Minister to apply separate conditions to alternative proposals in relation to the taking of an action. This item is consequential to item 178.
124. Items 267 to 276 are consequential to the insertion of section 133(2) by item 260 which distinguishes between the holder of an approval and persons, authorised, permitted or requested by the holder of the approval to take the relevant action.
125. Item 264 inserts new subsection 134(1A) which relates to the new subsection 133(2A) inserted by item 260. Subsection 134(1A) requires the holder of an approval to take an action to take all reasonable steps to ensure that any person undertaking any part of the action is aware of, and complies with, any relevant approval conditions. This item is related to item 289 which creates a defence to the offence of breaching a condition of approval in relation to a person who is not the holder of the relevant approval and was not informed of the condition and could not reasonably have been expected to be aware of the condition.
126. Items 274 and 275 insert new subsection 134(3A) into the Act and make a consequential amendment to paragraph 134(4)(a). This amendment allows the Minister to require a proponent to comply with conditions in an instrument as in force from time to time ensuring that any variations to conditions contained in the instrument automatically become applicable under the Act. Further, to avoid potential duplication or inconsistency, the Minister may require a proponent to comply with conditions contained in an instrument which has not yet come into force. This avoids the need to repeat conditions for projects subject to multiple approvals.
127. Item 277 inserts new subsection 134(4A) into the Act which clarifies that a condition which requires compliance with a condition in an instrument made under a law of the Commonwealth, a State or a Territory which is partly in excess of the power conferred by 134(1) continues to apply to persons taking the action to the extent that it is within power.
128. Items 265 to 274 amend section 134 of the Act to allow the Minister to attach a condition to a Part 9 approval which requires specified activities to be undertaken for protecting, or repairing or mitigating damage to, a matter protected under Part 3 of the Act; or, requiring a specified financial contribution to support such activities.

The Minister may require such measures whether or not the protection of a protected matter is protection from the action itself, or the damage will be caused by the action. The purpose of this amendment is to provide for activities which are not directly related to the taking of an action but which recompense for damage which the action may cause. Under section 134(3A) if conditions imposed under this provision are not reasonably related to the taking of the action, the Minister may not impose them unless the holder of the approval has consented to them.

Item 278 – At the end of Subdivision A of Division 1 of Part 9

129. This item inserts a new section 135A into the Act. This amendment is consequential to the amendment of sections 100 and 105 by items 230 and 243 and specifies requirements for the provision of recommendation reports. These requirements replace the previous requirements for the provision of assessment reports.

Items 279 to 286 – Section 136

130. The amendments to section 136 of the Act by items 279 to 284 are consequential to items 217, 230, 243 and 251. Item 284 inserts new paragraph 136(2) into the Act which requires the Minister, when considering an approval decision, to take into account the information in a notice provided by a State or Territory under new section 132A. Item 284 also inserts a note after 136(2) and is consequential to the insertion of 131AA.

131. Item 285 amends subsection 136(4) to broaden the Minister's ability to consider the environmental history of companies and company managers when deciding whether or not to approve an action under Part 9 of the Act. The purpose of this amendment is to ensure that the environmental history of a parent company or manager, who is in a position to exercise control over a company, is open to consideration when granting an approval to a company.

Items 287 and 288 – Section 139

132. These items amend section 139 by inserting a new subsection 139(2) into the Act. New subsection 139(2) requires the Minister to have regard to approved conservation advice (as a consequence of item 469) when considering approval of an action under section 18 or section 18A which is likely to, or will have a significant impact on, a listed threatened species or listed ecological community.

Item 289 – After subsection 142(1)

133. This item inserts a new subsection 142(1A) into the Act. This amendment relates to amendments to sections 133 and 134 and clarifies that contravention of an approval condition is not an offence for a person who is not the holder of an approval (e.g. a contractor) if they have not been informed of the condition and could not reasonably be expected to be aware of the condition. The defendant bears an evidential burden in relation to the matters in section 142(1A) because they would hold relevant documents such as contracts and work orders and therefore are uniquely able to establish these matters.

Item 290 – At the end of subsection 142A(4) - note

134. This item inserts a note at the end of subsection 142A(4) of the Act as a consequence of new section 496C.

Item 291 – Section 142B

135. This item inserts a new section 142B into the Act. It introduces a strict liability offence where a person contravenes a condition attached to an approval which has been granted under Part 9 of the Act. The intent of this provision is to enable enforcement of breaches of approval conditions, in particular minor technical breaches such as the failure to prepare and submit for approval an environmental management plan, which are difficult to enforce under the civil penalty and criminal offence provisions in sections 142 and 142A. The maximum penalty for the offence is 60 penalty units.

Items 292 to 300 – Section 143

136. Items 294 to 300 are consequential to the insertion of section 133(2) into the Act which distinguishes between the holder of an approval and persons authorised, permitted or requested by the holder of the approval to take the relevant action. Items 292 and 296 amend subsections 143(1) and 143(2) of the Act as a consequence of the insertion of new 134(1A) by item 264.

137. Item 293 inserts new paragraph 143(1)(ba) into the Act which provides the Minister with the ability to revoke, vary or add conditions to an approval where an action is having (or likely to have) substantially greater impacts on a matter of national environmental significance than that predicted during the assessment of the action.

138. Item 295 amends paragraph 143(1)(c) of the Act as a consequence of the insertion of new Division 5 of Part 9 of the Act.

139. Item 297 amends subsection 143(3) of the Act to broaden the Minister's ability to consider a companies environmental history to include the history of a parent company and company management for the purposes of revoking, varying or adding approval conditions (see also amendments to section 136).

Items 301 to 303 – Section 144

140. Item 303 is consequential to the insertion of section 133(2) by item 260 which distinguishes between the holder of an approval and persons, authorised, permitted or requested by the holder of the approval to take the relevant action. Item 301 inserts new subsection 144(2A) which provides the Minister with the ability to suspend an approval in reasonable circumstances where a timeframe or requirement in a key condition (as opposed to a more minor or administrative condition) to an approval under Part 9 has not been met. For example, to ensure a development activity does not occur at a time of year which may be damaging to a threatened species. Item 302 amends subsection 144(3) to broaden the Minister's ability to consider a companies environmental history to include the history of a parent company and company management for the purposes of suspending an approval (see also amendments to section 136 by item 297).

Items 304 to 306 – Section 145

141. Item 306 is consequential to the insertion of section 133(2) into the Act by item 260 which distinguishes between the holder of an approval and persons, authorised, permitted or requested by the holder of the approval to take the relevant action. Item 304 inserts new subsection 145(2B) into the Act which provides the Minister with the ability to revoke an approval in reasonable circumstances where a timeframe or requirement in a key condition to an approval has not been met (see also item 301). Item 305 amends subsection 145(3) of the Act to broaden the

Minister's ability to consider a companies environmental history to include the history of a parent company and company management for the purposes of revoking an approval (see also amendments to section 136 by item 297).

Items 307 to 310 – Section 145A

142. These items amend section 145A of the Act and are consequential to the insertion of section 133(2) by item 260 which distinguishes between the holder of an approval and persons, authorised, permitted or requested by the holder of the approval to take the relevant action.

Items 311 and 312 – Section 145B

143. Item 311 is consequential to the insertion of section 133(2) into the Act by item 260 which distinguishes between the holder of an approval and persons, authorised, permitted or requested by the holder of the approval to take the relevant action. Item 312 amends subsection 145B(4)(a) to broaden the Minister's ability to consider a companies environmental history to include the history of a parent company and company management for the purposes of transferring an approval (see also amendments to section 136 by item 297).

Item 313 – At the end of Part 9

144. This item inserts a new Division 5 at the end of Part 9 of the Act. This amendment enables the term of an approval to be varied (i.e. extended) in the same way that conditions on an approval can be varied, thereby avoiding the need to grant a new approval.

Items 314 to 317 – Section 146

145. Item 314 inserts a new heading, establishing Subdivision A of Division 1 of Part 10 of the Act and is required as a consequence of item 318 which inserts new Subdivision B of Division 1 of Part 10 of the Act. The items also insert a new subsection 146(1B) into the Act and repeal paragraphs 146(2)(aa) to (ac).

146. New subsection 146(1B) of the Act amends the current requirement to seek public comment on the draft terms of reference for strategic assessment, making it now optional. A public comment process has been a requirement for both draft terms of reference and the assessment reports. The public consultation process on the draft terms of reference for a report on the impacts of a policy plan or program under a strategic assessment agreement is adding an additional process that, at times, is of little value (i.e. very rarely have comments been received). In such instances it would be more efficient, and equally effective in terms of the overall process, to use generic terms of reference as specified in the Act and maintain the requirements relating to public comment on the draft reports. The amendments apply to agreements made under section 146 of the Act after the commencement of those items.

Item 318 – At the end of Division 1 of Part 10

147. This item inserts two new subdivisions, Subdivision B and C, at the end of Division 1 of Part 10 of the Act. This amendment is to facilitate a more strategic approach to the protection of matters of national environmental significance by giving the Minister capacity to approve (with or without conditions) the taking of certain actions in accordance with a policy, plan or program that has been endorsed under a section 146 strategic assessment.

148. Policies, plans or programs can take into account a wide range of potential impacts (including cumulative impacts within a region) and approvals under Subdivision B will allow certain actions to be undertaken without the need for separate environmental assessment and approval provided that they are undertaken in accordance with the requirements in the policy, plan or program. These approvals will provide an incentive for developers, States and Territories and Local Government to bring forward broad-scale development plans (such as industrial estates and coastal developments) early in the planning cycle. Subsection 146B(5) assists readers by confirming that an approval under 146B(1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 319 – Subsection 152(2)

149. This item amends section 152 of the Act by omitting all the words after “managing the fishery in subsection 152(2). This means that even if a management plan is in force for a fishery, another agreement can be made to assess the impacts of a Commonwealth managed fishery that are thought to have, will have or will be likely to have a significantly greater impact than when previously assessed.

Item 320 – Section 153

150. This item repeals section 153 of the Act and substitutes it with a new section 153. This new section provides that a fisheries management plan or regime endorsed under a section 146 agreement for strategic assessment will only be eligible for accreditation under section 33 if the criteria for accreditation are satisfied. Previously the Minister was required to make a declaration and accredit, under section 33, a management plan that was endorsed under a section 146 agreement. This requirement has not been possible to meet in some circumstances as some endorsed management policies and arrangements are not able to satisfy the definition of an accredited management plan in subsection 33(2) and the criteria set out in subsection 33(3) relating to accreditation of a management plan. The amendments clarify that the requirement to accredit the endorsed management plan or regime under section 33 only applies if the management arrangements meet the criteria for such a section 33 declaration and accreditation.

Item 321 – After Division 1 of Part 11

151. This item inserts a new section 156A into the Act. This amendment allows a person who has referred an action to the Minister for assessment and approval to request the Minister to accept a variation to the action. Most actions are referred to the Minister for assessment and approval during the planning stage of a proposal. It is common for circumstances and priorities to change as a proposal to take an action is refined. The purpose of this amendment is to provide greater flexibility for dealing with changes during the assessment process by providing a formal process for the variation of proposed actions.
152. New Section 156B requires the Minister to decide whether or not to accept a variation to an action requested by the person taking the action. The Minister may only accept a varied proposal if satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. If a variation changes the character of the proposal then, for reasons of rigour and transparency, it cannot be accepted by the Minister. If the Minister does not accept a variation, the person may withdraw the original proposal and refer the new proposal.

153. New section 156C allows the Minister to request more information from a person who requests a variation proposal, if the Minister believes there is not enough information to decide whether or not to accept the varied proposal. The statutory timeframes for the referral, assessment and approval processes are suspended from the time the Minister requests further information until the time the requested information is received.
154. New section 156D provides that while the Minister considers a request to accept a varied proposal the assessment processes and timeframes are suspended. If the Minister accepts a varied proposal then the assessment processes and timeframes recommence and the varied proposal is assessed in place of the original proposal. If the Minister does not accept a varied proposal then the assessment process and timeframes recommence in relation to the original proposal.
155. New section 156E requires the Minister to give notice of his or her decision whether or not to accept a varied proposal to the person taking the action, the designated proponent, and if the Minister decides to accept the variation and the action is within the jurisdiction of a State, the appropriate Minister of the relevant State.
156. This item also inserts a new section 156F into the Act. This amendment allows for a change in identity of a person proposing to take an action, after a proposed action has been referred, and before it has been approved. This amendment does not apply in circumstances where the Minister has determined that an action is not a controlled action (in accordance with section 75), or is not a controlled action if it is taken in a particular manner (in accordance with section 77A). In these cases the decision does not relate to a particular person and it is not necessary to change the identity of the person taking the action.

Item 322 – After Division 3 of Part 11

157. This item inserts new section 158A into the Act. This amendment provides greater certainty by ensuring that: new listings of species, Ramsar wetlands, or heritage properties or places; uplisting of species; and, changes to boundaries of Ramsar wetlands or heritage properties or places; do not affect specified assessment and approval decisions that have already been made and do not provide grounds for reconsideration of a ‘controlled action’ decision under section 75 or for the variation of conditions to an approval under section 133.

Item 323 – After paragraph 159(a) (second occurring)

158. This item amends section 159 of the Act by inserting a new paragraph 159(aa) into the Act and is required as a consequence of item 217.

Item 324 – After subsection 160(1)

159. This item inserts a new subsection 160(1A) into the Act and is required as a consequence of the insertion of new section 161A by item 327.

Items 325 and 326 – Section 161

160. This item amends subsection 161(1) of the Act and is required as a consequence of item 327.

Item 327 – After section 161

161. This item inserts a new section 161A into the Act. This amendment provides the Minister with the ability to determine that environmental assessment and provision of advice to a Commonwealth agency under section 160 is not required for actions that the Minister considers are not likely to have a significant impact on the environment. The purpose of this amendment is ensure that unnecessary environmental assessments are not undertaken for actions that are not likely to have a significant impact.

Items 328 and 329 – Section 163

162. These items amend subsection 163(2) and paragraph 162(2)(a) of the Act and insert new paragraphs 163(aa), 163(ab), 163(ac), and 163(ad) into the Act which are required as a consequence of items 217, 230 and 243. The amendment to subsection 163(2) omits the words “30 days” and substitutes the words “30 business days” for consistency with other timeframes in the Act.

Item 330 – Subdivision B of Division 4 of Part 11

163. This item repeals Subdivision B of Division 4 of Part 11 of the Act. This amendment brings cetacean permits into line with the assessment process for other species protected by Part 13 of the Act. Previously section 165 provided that permit applications under section 237 are required to undergo full environmental assessments under Part 8 of the Act, which proved to be an over regulatory approach that has not delivered any additional measures in relation to the protection of cetacean species and placed added burden on permit applicants.

Items 331 to 340 – Section 168

164. These items amend section 168 of the Act and are a consequence of items 217, 219, 230, 232, 243, 314 and 318.

Item 341 – Subsection 169(3)

165. This item amends section 169 of the Act and is a consequence of item 217.

Item 341 to 345 – Sections 170 and 170A

166. These items amend sections 170 and 170A of the Act as a consequence of items 217, 230, 243, 314 and 318.

Items 346 – At the end of Division 5 of Part 11

167. This item inserts new sections 170B and 170BA into the Act. New section 180B provides for the non-disclosure of sensitive information when inviting public comment on documents relating to referrals, assessments or approvals. This amendment will ensure that sensitive information critical to the survival of matters of national environmental significance, such as the locations of individual specimens of a critically endangered species, or of cultural sensitivity in relation to National Heritage, is not made public.

168. New section 170BA allows a proponent to request the Minister for permission to withhold commercial-in-confidence information when publishing assessment documentation in accordance with Division 4, 5 or 6 of Part 8 of the EPBC Act. The Minister may agree to commercial-in-confidence material being withheld if satisfied of the matters in section 170BA(5) of the Act.

Item 347 – At the end of Part 11

169. This item inserts a new section 170C into the Act. This amendment is to allow proponents to withdraw referrals at any stage in the referrals, assessments and approvals process (prior to an approval decision) if they do not want to proceed with the assessment.

Item 348 – Before Part 12 in Chapter 5

170. This item inserts a new section 170D into the Act to clarify the meaning of “business day” in relation to timeframes set out in Chapter 5.

Items 349 and 350 – Sections 172 and 173

171. These items repeal sections 172 and 173 of the Act and substitute new sections 172 and 173. The new sections replace the need and timeframes to undertake an inventory of protected species and ecological communities on Commonwealth land and surveys of protected species, including cetaceans, and ecological communities in Commonwealth marine areas. These amendments focus the need for inventories and surveys on areas which are of importance for the conservation of biodiversity and do not have a management plan in force with an object of protecting the environment or promoting the conservation of biodiversity.

Item 351 – Section 175

172. This item repeals section 175 of the Act as a consequence of items 349 and 350 which provide for inventories on Commonwealth land and surveys in Commonwealth marine areas to be optional rather than mandatory.

Item 352 – After subsection 176(4)

173. This item is to clarify that the instrument referred to in subsections 176(1) and (2) of the Act are not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 353 – Subsection 179(6)

174. This item amends section 179 of the Act by changing subsection 179(6) and inserting a new subsection (7). Previously, the subsection required a conservation dependent species to be the subject of a conservation program, which if ceased, would cause the species to become vulnerable, endangered or critically endangered within a period of five years. Recognising that the conservation status for a species may change at different rates, the amendment removes the timeframe in which the species would become vulnerable, endangered or critically endangered.
175. The amendment also allows for the listing of a species of fish (definition of which is provided at 179(7)) if the species is the focus of a plan of management which provides for halting decline and promoting survival and recovery. Such a plan may be in force under either Commonwealth law or State or Territory law.

Items 354 to 358 – Section 184

176. These items amend the wording of subsection 184(1) of the Act, add a new paragraph 184(1)(aa) into the Act and repeal subsections 184(2), 184(3), 184(4) and 185(5), replacing them with one new subsection 184(2). These amendments replace the requirement for the Minister to publish an instrument in the *Gazette* with a legislative instrument, in order to make an amendment to the lists referred to in sections 178, 181 or 183 of the Act. This legislative instrument is exempt from Part 6 of the *Legislative Instruments Act 2003*. The other amendments are required as a consequence of new Subdivision AA of the Act.

Item 359 – Section 185

177. This item repeals section 185 of the Act as a consequence of amendments to the listing process for threatened species and ecological communities dealt with in item 368.

Item 360 – Section 186

178. This item amends section 186 of the Act by repealing subsections 186(1) and (2) and replacing them with new subsections 186(1), 186(2), 186(2A) and 186(2B). This amendment is to ensure the Minister is able to consider the contribution that listing or deleting a species from a list would have on the survival of that species. This amendment maintains the requirement for the Minister to not include or delete a native species from a particular category unless satisfied that the native species is eligible or no longer eligible (as the case requires) to be included in that category.

Item 361 – Section 187

179. This item repeals section 187 of the Act and substitutes a new section 187. This amendment relates to ecological communities and mirrors that of item 360 which relates to species.

Items 362 to 364 – Section 189

180. These items amend section 189 of the Act by repealing subsections 189(1), (3), (4), (5) and (6) and adding new subsections 189(1), (1A), (1B), (3) and (3A) into the Act.
181. New subsections 189(1) and (1A) make technical amendments as a consequence of the new listing provisions in the Act. New subsection 189(1B) sets out the type of information that must be included in the advice from the Scientific Committee. This amendment also requires the Scientific Committee to provide advice about what could be done to stop decline of the species or ecological community or provide a statement that nothing can be done. The Committee is also required to make a recommendation on whether or not there should be a recovery plan for the species or ecological community.
182. The amendment to subsection 189(3) of the Act is to allow the Scientific Committee, when preparing advice to the Minister on a proposed amendment to delete a threatened species or ecological community from the lists referred to in sections 178 and 181 of the Act, to have regard to the effect that inclusion in the lists has, or could have on the survival of the species or ecological community.
183. New subsection 189(3A) allows the Scientific Committee to consider the same matters as in subsection 189(3) of the Act, for the purposes of preparing advice for the Minister in relation to including or deleting a native species from the list referred to in section 178 of the Act because of the species' resemblance to another species.
184. Subsections 189(4), 189(5) and 189(6) of the Act are redundant as a consequence of the amended listing process for threatened species and ecological communities and new section 189B of the Act.

Item 365 – After section 189

185. This item inserts two new sections 189A and 189B into the Act. New section 189A provides for the Minister to keep certain information confidential, such as the precise location of listed threatened species or ecological communities, if the Minister considers this is warranted to protect the species or ecological community (for example, from damage or illegal collection).

186. New section 189B requires members of the Scientific Committee not to disclose an assessment, or information used to make an assessment, of any proposed amendments to the lists referred to in sections 178, 181 and 183 of the Act, until such an amendment has been registered under Division 3 of Part 4 of the *Legislative Instruments Act 2003*, or the Minister decides not to include the item in the lists, or the Minister decides to remove the item from the lists. The Minister can give permission for the Scientific Committee to disclose particular information to particular persons.

Item 366 – Section 191

187. This item repeals section 191 of the Act and is required as a consequence of amendments to the listing process for threatened species and ecological communities dealt with in item 368.

Item 367 – Section 194

188. This item amends section 194 of the Act to require that up to date copies of the lists referred to in sections 178, 181 and 183 of the Act are made available on request free of charge instead of available for purchase, and also to require the Minister to publish an up to date copy of the lists on the internet.

Item 368 – After Subdivision A of Division 1 of Part 13

189. This item inserts a new subdivision AA, after subdivision A of Division 1 of Part 13 of the Act. The new Subdivision AA amends the process for listing threatened species, ecological communities and key threatening processes. The intent of the amendment is to reform the listing procedures to enable the Minister to set strategic assessment directions and priorities, following advice from the Threatened Species Scientific Committee, based on an approach that listing is focused on those species and ecological communities in greatest need of protection. This will allow the Minister to direct resources towards matters which will achieve the greatest conservation benefit.
190. The key changes to the listing process include the ability for the Minister to determine conservation themes (see new section 194D), and the dedicated period in which nominations may be submitted. These could include groups of particular plants and/or animals, or particular geographic regions. The Minister may request and consider advice from the Scientific Committee in determining the theme.
191. New sections 194A and 194B provide a simplified outline of the new subdivision and relevant definitions.
192. New section 194C provides the meaning of, timeframe for and commencement of, the assessment period.
193. New sections 194D and 194E provide for the Minister to determine conservation themes for and invite nominations to be made within the determined conservation theme. This invitation period must be at least 40 business days.
194. New section 194F requires the Minister to give the nominations received during the invitation period to the Scientific Committee. This must be done within 30 business days from the specified cut off date of the invitation period. The Minister may reject nominations for the reasons outlined in subsection 194F(3).

195. New section 194G requires the Scientific Committee to consider the nominations received and prepare for the Minister's consideration a priority assessment list. It must provide the Minister with the list within 40 business days. As well as having regard to the Minister's determined conservation themes, the Scientific Committee may add things to the priority assessment list that it considers appropriate or that the Scientific Committee itself wishes to nominate.
196. New sections 194H and 194J specifies what information is to be included for each item in the priority assessment list, including an assessment completion time for each item and requires the Scientific Committee to provide the Minister its reasons in writing for omitting any nominated items from the priority assessment list, as well as for including any items in the list as a result of the Scientific Committee wishing to nominate those items itself.
197. New section 194K requires the Minister to consider the priority assessment list provided by the Scientific Committee. The Minister may make changes to the list subject to subsection 194K(2) within 20 business days of receiving it. The Minister must notify the Scientific Committee of any changes the Minister makes to the list. After 20 business days, the list becomes the final assessment list.
198. New sections 194L and 194M, require the Scientific Committee to publish the list and to invite people to submit comments about the items on the list. A minimum of 30 business days is to be allowed for comments on items on the list to be submitted after publication of the call for comments.
199. The Scientific Committee then prepares assessments of the items on the list, subject to section 194N, having regard to the comments received, and provides the assessments and copies of the comments received to the Minister by the assessment completion time (section 194P). The Minister then decides whether the items that have been assessed should be included in the lists referred to in Subdivision A, sections 178, 181 or 183 (section 194Q).
200. New section 194P provides for the Scientific Committee to seek an extension to the assessment period for items, and the Minister may grant an extension, but this must be for a period no longer than 5 years. The timeframe for the Minister to make a decision on whether or not to include an item in the lists is 90 business days. The Minister may also grant an extension to the time allowed for the decision on an item.
201. New section 194R provides that the Scientific Committee in undertaking its work may obtain advice from persons with expertise relevant to the inclusion of items in the lists.
202. To avoid any unnecessary duplication, or potential conflict between various listing decisions, new section 194S provides linking provisions and a process for coordination of the assessment work of the Scientific Committee and the Australian Heritage Council. The provisions apply if the Scientific Committee undertakes an assessment under the listing processes and is aware that the Australian Heritage Council is undertaking an assessment, and there is a matter relevant to both assessments. The item also allows communication and exchange of information between the advisory bodies.

203. New section 194T provides for coordination of the assessment work of the Scientific Committee and the Australian Heritage Council. If the Scientific Committee has given the Minister an assessment under the listing processes and is aware that the Council is undertaking an assessment, and there is a matter relevant to both assessments, the Scientific Committee is required to ensure that the Council is made aware of, and given a copy of the assessment. The item also allows discussion of the matters between members the advisory bodies.
204. A determination made for the purposes of sections 194C and 194D are legislative instruments, but neither section 42 nor Part 6 of the Legislative Instruments Act 2003 applies to the determinations.
205. Notwithstanding this process, the Minister retains the ability to ask the Committee to provide advice on any potential listing at any time.
206. The proposed priority assessment list referred to in section 194G and the finalised priority list referred to in section 194K are not legislative instruments.

Items 369 to 374 – Sections 196, 196B and 196D

207. These items amend sections 196, 196B and 196D of the Act. The reference to ‘native’ is omitted from paragraphs 196(1)(b), 196B(1)(a) and 196D(1)(a). Provision is also made for strict liability to apply in relation to the circumstance in paragraphs 196(1)(c), 196B(1)(b) and 196D(1)(b) that the member of a species is a member of a listed threatened species or a member of an ecological community is a member of a listed threatened ecological community. The intent of these amendments is to make it absolutely clear that the prosecution does not have to show a person knew or was reckless as to the fact that the list existed and that the particular member of the species or community was on the list. The headings to section 196, 196B and 196D are also amended by removing the reference to ‘recklessly’. The reference is no longer necessary as the default element of reckless will automatically apply to the relevant circumstance.

Items 375 to 379 – Section 197

208. These items amend section 197 of the Act by inserting new paragraphs 197(da), 197(db), 197(l), 197(m), 197(n), 197(o), 197(p) and 197(q). These amendments add additional actions that are not offences for the purposes of the offence provisions relating to listed threatened species and ecological communities. The additional exemptions cover actions taken by specified persons in relation to species reintroduced into areas, taken in accordance with a bioregional plan, Commonwealth Reserve management plan or conservation agreement, those for which certain other approvals have been granted under the Act or specified other environmental legislation, relating to species taken prior to listing for a period of 6 months after listing and the transit of species through Commonwealth areas in certain circumstances. Items 375 and 376 amend subsection 197(c) and paragraph 197(d)(i) to make minor technical amendments to better reflect the applicable offences. Item 377 is a consequential amendment relating to item 96. The amendments to his paragraph 197(d) are consequential to the insertion of new Division 3 of Part 4 of the Act by item 122.

Items 380 and 381 – Section 199

209. These items amend section 199 of the Act by repealing subsection 199(4) and substituting a new subsection 199(4) and changing the wording of paragraph 199(1)(b). This amendment inserts an additional paragraph which allows for the Secretary to agree to alternate reporting arrangements with other government

agencies in relation to the death or injury or taking, trading, keeping or moving a listed threatened species where there is duplication of statutory reporting requirements. The amendments to paragraph 199(1)(b) of the Act are a consequence of item 378.

Item 382 – Section 200

210. This item amends section 200 of the Act. This amendment inserts a new consultation process for listed threatened species and ecological community permit applications which mirrors the consultation process for referrals under Part 7 of the Act. The purpose of this amendment is to align these consultation processes to facilitate joint consideration and concurrent decisions on whether or not an action requires approval under Part 9 of the Act and whether or not to issue a permit under Part 13 of the Act.

Items 383 to 385 – Section 201

211. These items amend section 201 of the Act as a consequence of items 469 and 382.

Items 386 to 388 – Section 206A

212. These items amend section 206A of the Act by inserting a new subsection 206A(2) which removes review by the Administrative Appeals Tribunal as an avenue of review for relevant decisions made personally by the Minister. This leaves the merits of these important decisions to be dealt with by the Government. Decisions made by a delegate of the Minister remain subject to review by the Administrative Appeals Tribunal. The other amendments are required as a consequence of the new subsection 206A(2).

Items 389 and 390 – Section 207A

213. These items amend section 207A of the Act to include new subsections 207A(1A) and (1B) and 207A(3B). The amendments require the Minister to consider the conservation benefit of listing habitat critical to the survival of a listed threatened species or ecological community. The Minister is to have discretion to withhold specific information in the register of critical habitat from release if such release could adversely affect landholders interests.

Item 391 – Section 208A

214. This item repeals section 208A and substitutes a new section 208A of the Act. This expands the types of fisheries management arrangements that can be accredited, such that exemptions from offences apply to actions taken in accordance with the accredited arrangements. New arrangements provided for include State and Territory policies, regimes or other arrangements and plans of management and policies under the *Torres Strait Fisheries Act 1984*. The amendments also make wording changes to subsection 208A(d) as a result of item 353.

Item 392 to 397 – Section 209

215. These items amend section 209 of the Act to clarify that in order to be included in the list of migratory species, a species must be a “native species” as defined in Section 528 of the Act and must be “migratory” as provided for in the expanded definition of this term in new paragraph 209(8). The items also clarify that the list of migratory species includes the species in the *annexes* to JAMBA and CAMBA which more accurately reflects the locations of the lists of species in these agreements. The items remove outdated references to the *Gazette* and specify that

instruments establishing the list, making amendments or adding an international agreement relating to conservation of migratory species are legislative instruments.

Items 398 to 403 – Sections 211, 211B and 211D

216. These items amend sections 211, 211B and 211D of the Act. The reference to ‘migratory’ is omitted from paragraphs 211(1)(b), 211B(1)(a) and 211D(1)(a). Provision is also made for strict liability to apply in relation to the circumstance in paragraphs 211(1)(c), 211B(1)(b) and 211D(1)(b) that the member of a species is a member of a listed migratory species. The intent of these amendments is to make it absolutely clear that the prosecution does not have to show a person knew or was reckless as to the fact that the list existed and that the particular member of the species was on the list. The headings to sections 211, 211B and 211D are also amended by removing the reference to ‘recklessly’. The reference is no longer necessary as the default element of reckless will automatically apply to the relevant circumstance.

Items 404 to 408 – Section 212

217. These items amend section 212 of the Act by inserting new paragraphs 212(da), 212(db), 212(l), 212(m), 212(n), 212(o), 212(p) and 212(q). These amendments add additional actions that are not offences for the purposes of the offence provisions relating to listed migratory species. The additional exemptions cover actions taken by specified persons in relation to species reintroduced into areas, taken in accordance with a bioregional plan, Commonwealth Reserve management plan or conservation agreement, those for which certain other approvals have been granted under the Act or specified other environmental legislation, relating to species taken prior to listing for a period of 6 months after listing and the transit of species through Commonwealth areas in certain circumstances.

218. Items 404 and 405 items amend subsection 212(c) and paragraph 212(d)(i) to make minor technical amendments to better reflect the applicable offences. Item 406 is a consequential amendment relating to item 96. This item amends paragraph 212(d) and is consequential to the insertion of new Division 3 of Part 4 of the Act by item 122.

Items 409 and 410 – Section 214

219. These items amend section 214 of the Act by repealing subsection 214(4) and substituting a new subsection 214(4) and making wording changes to paragraph 214(1)(b). This amendment inserts an additional paragraph which allows for the Secretary to agree to alternate reporting arrangements with other government agencies in relation to the death or injury or taking, trading, keeping or moving a listed migratory species where there is duplication of statutory reporting requirements. The amendments to paragraph 214(1)(b) are a consequence of item 378.

Item 411 – Section 215

220. This item amends section 215 of the Act. This amendment inserts a new consultation process for listed migratory species permit applications which mirrors the consultation process for referrals under Part 7 of the Act. The purpose of this amendment is to align these consultation processes to facilitate joint consideration and concurrent decisions on whether or not an action requires approval under the Part 9 and whether or not to issue a permit under Part 13 of the Act.

Item 412 – Section 216(4)

221. This item amends subsection 216(4) of the Act. This amendment is consequential to the amendment of section 215 which aligns the consultation processes for listed migratory species permit applications under Part 13 and referrals under Part 7 of the Act.

Items 413 to 415 – Section 221A

222. These items amend section 221A of the Act by inserting a new subsection 221A(2) which removes review by the Administrative Appeals Tribunal as an avenue of review for relevant decisions made personally by the Minister. This leaves the merits of these important decisions to be dealt with by the Government. Decisions made by a delegate of the Minister remain subject to review by the Administrative Appeals Tribunal. The other amendments are required as a consequence of the new subsection 221A(2).

Item 416 – Section 222A

223. These items repeal section 222A and substitute a new section 222A of the Act. This expands the types of fisheries management arrangements that can be accredited, such that exemptions from offences apply to actions taken in accordance with the accredited arrangements. New arrangements provided for include State and Territory policies, regimes or other arrangements and plans of management and policies under the *Torres Strait Fisheries Act 1984*.

Items 417 and 418 – Section 224

224. This item amends section 224 of the Act by repealing sub-section 224(4) and amending sub-section 224(2) of the Act as a consequence of amendments relating to item 434.

Item 419 – Subdivision B of Division 3 of Part 13 (Heading)

225. This item amends the heading to reflect the new provisions relating to important habitat areas.

Item 420 – Section 225

226. This item amends section 225 of the Act by repealing subsection 225(2) and inserting a new subsection 225(2) of the Act. This amendment provides a new description of the Australian Whale Sanctuary using a similar formulation to that utilised in the description of the “Commonwealth marine area” in Section 24 of the Act. This amendment is to clarify that the waters included in the Australian Whale Sanctuary include the Territorial Sea waters from 3-12 nautical miles.

Item 421 – Section 228A

227. This item inserts a new section 228A into the Act which provides for the Minister to declare specified areas of the Australian Whale Sanctuary as important cetacean habitat areas provided the areas meet the requirements prescribed by regulation.

Item 422 – Subsection 229(1)

228. This item amends subsection 229(1) of the Act. Provision is made for strict liability to apply in relation to the circumstance in paragraph 229(1)(c) that the cetacean is in Australian Whale Sanctuary or waters beyond the outer limits of the Australian Whale Sanctuary. These amendments are to make it absolutely clear that the prosecution does not have to show a person knew or was reckless as to the fact that the cetacean is in or beyond the outer limits of the Australian Whale Sanctuary. The heading to section 229 is also amended by removing the reference to ‘recklessly’. The reference is no longer necessary as the default element of reckless will automatically apply to the relevant circumstance.

Item 423 – Section 229B

229. This item inserts a definition of “trade” in sub-section 229B(4) of the Act that reflects that permitting for international trade in cetaceans is provided for under Part 13A of the Act.

Items 424 and 425 – Section 229D

230. These items insert an offence provision in subsections 229D(2A) and (2B) of the Act relating to treating unlawfully imported cetaceans. This is a consequential amendment to those that remove the duplication of permits in relation to the international trade in cetaceans at item 434.

Items 426 to 428 – Section 230

231. These items insert an offence provision in section 230 of the Act relating to possession of unlawfully imported cetaceans. This is a consequential amendment to those that remove the duplication of permits in relation to the international trade in cetaceans at item 434.

Items 429 to 432 – Section 231

232. This item amends section 231 of the Act by inserting new paragraphs 231(aa), 231(ba), 231(bb), 231(bc), 231(ga), 231(i), 231(j) and 231(k) into the Act. These amendments add additional actions that are not offences for the purposes of the offence provisions relating to cetaceans. The additional exemptions cover actions that are whale-watching undertaken in accordance with the regulations other than commercial whale-watching in important habitat areas. Additional exemptions cover actions taken in accordance with a bioregional plan, Commonwealth Reserve management plan or conservation agreement, those for which certain other approvals or declarations have been granted under the Act or specified other environmental legislation, and the transit of species through Commonwealth areas in certain circumstances.

Item 433 – Subsection 232(4)

233. This item amends section 232 of the Act by repealing subsection 232(4) and substituting a new subsection 232(4). This amendment inserts an additional paragraph which allows for the Secretary to agree to alternate reporting arrangements with other government agencies in relation to cetaceans where there is a duplication of statutory reporting requirements.

Item 434 – Subdivision D of Division 3 of Part 13

234. This item repeals Subdivision D of Division 3 of Part 13 of the Act which includes sections 232A, 232B, 233, 234 and 235. These amendments, and other consequential amendments remove the duplicative provisions that currently require

an applicant to obtain two permits for the international movement of cetaceans under both Part 13 and Part 13A of the Act. The amendments will allow for applicant to apply for one permit only under Part 13A which relates to permits issued under *The Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES). Cetaceans are listed under CITES.

Item 435 – Subsection 236(5)

235. This item amends sub-section 236(5) of the Act to change the definition “foreign whaling vessel” by replacing “whale” with “cetacean” so that the definition refers to all whales, dolphins and porpoises.

Items 436 and 437 – Section 237

236. This item amends section 237 of the Act. This amendment inserts a new consultation process for cetacean permit applications which mirrors the consultation process for referrals under Part 7 of the Act. The purpose of this amendment is to align these consultation processes to facilitate joint consideration and concurrent decisions on whether or not an action requires approval under the Part 9 and whether or not to issue a permit under Part 13 of the Act.

Items 438 to 445 – Section 238

237. These items amend section 238 of the Act by inserting a new subsection 238(3AA), substituting new subsection 238(3A) and paragraph 238(3)(c), repealing paragraphs 238(3)(d) and 238(3)(e) and the note at the end of subsection 238(3), and making word changes to subsections 238(1), 238(2) and 238(5). New subsection 238(3A) is consequential to the amendment of section 237 which aligns the consultation processes for cetacean permit applications under Part 13 and referrals under Part 7 of the Act. In subsection 238(5) the definition of “whale watching” is amended so that the definition refers to all whales, dolphins and porpoises. The amended paragraph 238(3)(c) is to make it clear that permits for whale watching are not required if the action is taken in accordance with the whale watching regulations except when the whale watching is undertaken in important habitat areas. The amendments to subsection 238(1) are of a technical nature only. New subsection 238(3AA) is required as a consequence of item 469 and the repeal of paragraphs 238(3)(d) and 238(3)(e) is a consequence of amendments to Subdivision D of Division 3 of Part 12.

Items 446 to 448 – Section 243A

238. These items amend section 243A of the Act by inserting a new subsection 243A(2) which removes review by the Administrative Appeals Tribunal as an avenue of review for relevant decisions made personally by the Minister. This leaves the merits of these important decisions to be dealt with by the Government. Decisions made by a delegate of the Minister remain subject to review by the Administrative Appeals Tribunal. The other amendments are required as a consequence of the new subsection 243A(2).

Item 449 – Section 245

239. These items repeal section 245 of the Act and substitute a new section 245. This expands the types of fisheries management arrangements that can be accredited, such that exemptions from offences apply to actions taken in accordance with the accredited arrangements. New arrangements provided for include State and Territory policies, regimes or other arrangements and plans of management and policies under the *Torres Strait Fisheries Act 1984*.

Items 450 to 455 – Sections 254, 254B and 254D

240. These items amend sections 254, 254B and 254D of the Act. The reference to ‘marine’ is omitted from paragraph 254(1)(b), 254B(1)(a) and 254D(1)(a) as part of the restructuring of the offence provisions. Provision is also made for strict liability to apply in relation to the circumstance in paragraphs 254(1)(c), 254B(1)(b) and 254D(1)(b) that the member of a species is a member of a listed marine species. These amendments are to make it absolutely clear that the prosecution does not have to show a person knew or was reckless as to the fact that the list existed and that the particular member of the species was on the list. The headings to sections 254 and 254B are also amended by removing the reference to ‘recklessly’. The reference is no longer necessary as the default element of reckless will automatically apply to the relevant circumstance.

Item 456 – Section 255

241. This item amends section 255 as a consequence of item 96.

Items 457 and 458 – Section 255

242. These items amend section 255 of the Act by inserting new paragraphs 255(da), 255(db), 255(l), 255(m), 255(n), 255(o), 255(p) and 255(q) into the Act. These amendments add additional actions that are not offences for the purposes of the offence provisions relating to listed marine species. The additional exemptions cover actions taken by specified persons in relation to species reintroduced into areas, taken in accordance with a bioregional plan, Commonwealth Reserve management plan or conservation agreement, those for which certain other approvals have been granted under the Act or specified other environmental legislation, relating to species taken prior to listing for a period of 6 months after listing and the transit of species through Commonwealth areas in certain circumstances. This item amends paragraph 255(d) and is consequential to the insertion of new Division 3 of Part 4 of the Act by item 122.

Item 459 and 460 – Section 256

243. These items amend section 256 by repealing subsection 256(4) and substituting a new subsection 256(4) of the Act. This amendment inserts an additional paragraph which allows for the Secretary to agree to alternate reporting arrangements with other government agencies in relation to cetaceans where there is a duplication of statutory reporting requirements.

Item 461 – Section 257

244. This item amends section 257 of the Act. This amendment inserts a new consultation process for listed marine species permit applications which mirrors the consultation process for referrals under Part 7 of the Act. The purpose of this amendment is to align these consultation processes to facilitate joint consideration and concurrent decisions on whether or not an action requires approval under the Part 9 and whether or not to issue a permit under Part 13.

Item 462 – Section 258(4)

245. This item amends subsection 258(4) of the Act. This amendment is consequential to the amendment of section 257 which aligns the consultation processes for listed marine species permit applications under Part 13 and referrals under Part 7 of the Act.

Items 463 to 465 – At the end of section 263A

246. These items amend section 263A of the Act by inserting a new subsection 263A(2) which removes review by the Administrative Appeals Tribunal as an avenue of review for relevant decisions made personally by the Minister. This leaves the merits of these important decisions to be dealt with by the Government. Decisions made by a delegate of the Minister remain subject to review by the Administrative Appeals Tribunal. The other amendments are required as a consequence of the new subsection 263A(2).

Item 466 – Section 265

247. This item repeals section 265 and substitutes it with a new section 265 of the Act. This expands the types of fisheries management arrangements that can be accredited, such that exemptions from offences apply to actions taken in accordance with the accredited arrangements. New arrangements so provided for include State and Territory policies, regimes or other arrangements and plans of management and policies under the *Torres Strait Fisheries Act 1984*.

Item 467 – Division 4A of Part 13

248. This item repeals section 266A of the Act. This amendment is consequential to the amendment of sections 200, 215, 237 and 257 which aligns the consultation processes for permit applications under Part 13 with referrals under Part 7 of the Act.

Item 468 and 469 – Before Subdivision A of Division 5 of Part 13

249. These items amend the heading for Division 5 of Part 13 of the Act and insert a new Subdivision AA into the Act. Subdivision AA requires the Minister to ensure there is approved conservation advice for each threatened species and threatened ecological community. Conservation advice contains information on key threats to the species or ecological community and action that needs to be taken to protect the species or community. It includes a statement of priority for the preparation of additional recovery planning documents, if further planning is warranted.

250. The Minister must decide whether to have a recovery plan for a threatened species or ecological community (see item 470) but must ensure that approved conservation advice is in place for a listed threatened species or ecological community at all times. The Minister must have regard to approved conservation advice when making decisions relevant to a threatened species or ecological community. This amendment will facilitate more timely recovery action as it requires information relevant to the conservation of a threatened species or ecological community to be available at the time of listing.

251. Subsection 266B(8) is included to clarify that approved conservation advice and changes to it are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 470 – Section 267

252. This item amends the simplified outline of Subdivision A of Division 5 of Part 13 of the Act as a consequence of item 469.

Item 471 – Section 269AA

253. This item amends Subdivision A of Division 5 of Part 13 of the Act by inserting a new section 269AA into the Act and is required as a consequence of item 470. This amendment requires the Minister to decide whether to have a recovery plan for a threatened species or ecological community. The Minister is obliged to make this decision within 90 days of the species or ecological community becoming listed. Following this decision, the Minister then has the discretion to decide at any other time to have a recovery plan for a threatened species or ecological community. This amendment is to allow the Minister greater flexibility to respond to changing conservation needs of threatened species and ecological communities, but requires the Minister to make a timely initial decision on a species' or ecological community's recovery planning needs. Section 269AA(10) is included to clarify that the instrument containing the decision to have a recovery plan is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 472 to 477 – Section 269A

254. These items amend section 269A of the Act. Subsection 269(1) is amended as a consequence of item 471 and sets out when section 269A applies, in relation to the decision the Minister must make under 269AA. Items 473 to 477 allow the Minister to undertake regional recovery planning for a listed threatened species or ecological community. These amendments broaden the range of recovery planning options available to the Minister. The amendment to subsection 269A(2) is a consequence of item 471.

Items 478 and 479 – Section 270

255. These items amend section 270 of the Act by inserting a new subsection 270(2A) into the Act and making consequential word changes to subsection 270(2). The new subsection is to facilitate more efficient approval of recovery plans by removing the mandatory requirements attached to excessively prescriptive elements – for which information is not always readily available and does not contribute to the immediate protection of threatened species or ecological communities. The wording of subsection 270(2) is amended as a consequence of item 479.

Items 480 and 481 – Section 271

256. These items amend section 271 of the Act by repealing paragraphs 271(2)(d) to 271(2)(f) and inserting new subsections 271(4) and 271(5). Section 271 establishes the content of threat abatement plans and the matters the Minister must have regard to in making such a plan. These amendments provide for some requirements for threat abatement plans, such as the estimated duration and cost of the threat abatement process, to be optional rather than mandatory. This requires that some threat abatement plans are written to reflect the likelihood that some threat abatement actions are likely to be ongoing. This is because there is no likelihood of nationally ceasing some threatening processes in the foreseeable future. Furthermore, as it is intended that contributions toward the cost of implementation of the actions in the plan will come from a variety of sources and stakeholders, the total cost of the plan's implementation cannot necessarily be quantified at the time of making the plan.

Item 482 – Section 273

257. This item amends section 273 of the Act as a consequence of new section 269AA.

Items 483 and 484 – Section 283A

258. These items amend section 283A of the Act by including a provision in subsection 283A(1) enabling the Minister to revoke a recovery plan, should the Minister decide not to have a recovery plan, as provided for by new section 269AA. This amendment makes the Minister's ability to revoke a recovery plan consistent with the current ability to revoke a threat abatement plan. Amendments to paragraph 283A(2)(a) are a consequence of item 483.

Item 485 – Section 299

259. This item amends section 299 of the Act as a consequence of new section 269AA.

Item 486 – At the end of Subdivision C of Division 5 of Part 13

260. This item amends Subdivision C of Division 5 of Part 13 of the Act by inserting a new section 300B into the Act. This amendment is to allow the Minister to request advice or information from the Scientific Committee at any time, to assist the Minister fulfil the obligations under sections 266B, 269AA or 270A – relevant to conservation advice, recovery plans and threat abatement plans.

Item 487 – At the end of Division 8 of Part 13

261. This item inserts new sections 303AA and 303AB into the Act which provide for minor amendments to policies, regimes or plans that are accredited under section 208A, 222A, 245 or 265. Where such a policy, regime or plan is amended or proposed to be amended, the Minister may make a determination that a policy, regime or plan as amended is taken to be an accredited policy, regime or plan for the purpose of the Act. The Act then applies to the amended policy, regime or plan instead of the original policy, regime or plan. The Minister can only make a determination under section 303AA if satisfied that the amendments are, or will be, minor, and meet the requirements in subsection 208A(1), 222A(1), 245(1) or 265(1). Subsection 303AB(3) confirms that a determination under 303AB(1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 488 and 489 – Section 303CG

262. This item inserts a new subsection 303CG(2A) into the Act which provides for certain permit conditions to continue to have effect after the permit has expired. This means that certain imports or exports of specimens may have conditions about the future sale, the manner of keeping or any reproduction that may apply for the life of the specimen, or its progeny.

Items 490 to 495 – Section 303CH and 303CH table

263. These items amend section 303CH of the Act. The amendments maintain the requirement for an import permit but limits the need for imports to be from a commercial import program to specimens that have been identified as declared specimens through publication of a notice in the *Gazette*, and where the specimen is not, or is not derived from an animal bred in captivity and is not, or is not derived from a plant that has been artificially propagated. The requirement for the specimen to be covered by an export permit from the relevant CITES authority of the export country is maintained. The amendments also add an approved cultivation program

to the list of programs for which an export permit can be issued for a CITES II specimen. The requirement to publish a notice in the *Gazette* is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 496 – Section 303CJ(b)

264. This item amends paragraph 303CJ(b) of the Act as a consequence of amendments to section 303CG.

Item 497 – Paragraph 303DB(6)(a)

265. This item amends section 303DB of the Act by adding a new paragraph into the Act after paragraph 303DB(6)(a). The amendment requires the Minister to have regard to any approved conservation advice for a listed threatened species (as a consequence of new section 266B) when considering whether to include a species in the list of exempt native specimens, as provided for by section 303DB.

Items 498 to 502 – Section 303DG

266. These items amend section 303DG of the Act which lists requirements that must be met before a permit can be issued. In the case of specimens that are or are derived from native species that do not belong to an eligible threatened species (defined in section 303BC), the proposed export must be either an eligible non-commercial purpose export (defined in section 303FA) or an eligible commercial purpose export (defined in section 303FJ). An export is an eligible commercial purpose export if the specimens are sourced from a program listed under Section 303FJ. In the case of specimens that are or are derived from eligible listed threatened species, the proposed export must be either an eligible non-commercial purpose or sourced from programs listed in 303DG(7). The amendments add the approved cultivation program to the programs listed in section 303DG(7). The addition enables native species that are or are derived from eligible threatened species to be commercially exported if sourced from an approved cultivation program. A similar change to section 303FJ enables specimens that are or are derived from species that are not eligible threatened species to be commercially exported if sourced from an approved cultivation program.

267. The amendments also add a new subsection 303DG(4A) into the Act, and make consequential word changes to subsection 303DG(1), requiring the Minister to have regard to any approved conservation advice for a listed threatened species (as a consequence of new section 266B) when considering whether to issue a permit as provided for by section 303DG.

Item 503 – Paragraph 303DI(b)

268. This item amends paragraph 303DI(b) of the Act as a consequence of amendments to section 303CG.

Item 504 and 505 – Section 303EB

269. These items streamline the process for assessing the potential environmental impact of live plant imports by removing duplication and allowing reliance on assessments undertaken by Biosecurity Australia. Part 1 of the list of specimens suitable for live import established under this Act is a list of unregulated specimens.

270. Subsection 303EB(11A) is inserted into the Act such that Part 2 of the list includes CITES specimens provided the introduction of the plant into Australia is in accordance with the *Quarantine Act 1908*. Part 2 of the list is a list of specimens suitable for import with an import permit which may have conditions.

Item 506 – Section 303ED

271. This item amends section 303ED by repealing subsections 303ED(2), (3) and (4) and substituting new subsections 303ED(2) and (3) of the Act. These amendments remove the duplication that exists between the risk assessment conducted by Biosecurity Australia and that conducted by the Department of the Environment and Heritage for biological control agents in cases where the Minister has proposed the list amendment on his own initiative. Currently both Departments are required to conduct a separate process for assessing the potential risk of importing and releasing biological control agents. Biosecurity Australia coordinates a comprehensive process to assess the potential risks of importing new biological control agents into Australia which addresses environmental risk in which the Department of the Environment and Heritage is a stakeholder. The assessment of biological control agents under the Act duplicates Biosecurity Australia's process without adding value.
272. This amendment removes the duplication while retaining the requirement for legislative approval under the Act. Under this amendment the Minister may utilise the assessment undertaken by Biosecurity Australia in making his decision on whether the list should be amended to include particular live biological control agents as suitable for live import. If the Minister is not satisfied with the assessment, he may require further assessment prior to making a decision to amend the live import list. Without the agreement of the Minister for the Environment and Heritage the import cannot be permitted.

Item 507 – Section 303EE

273. This item amends section 303EE by repealing subsection 303EE(2) and substituting new subsections 303EE(2), (3) and (4) of the Act. The amendments remove the duplication that exists between the risk assessment conducted by Biosecurity Australia and that conducted by the Department of the Environment and Heritage for biological control agents in cases where the application to import has been made by a member of the public, for example, a scientist. Other than the difference in the source of the action, this amendment has the same effect as described for section 303ED.

Item 508 – Section 303EF

274. This item changes one of the assessment requirements from Section 303EF of the Act from being mandatory to being optional in order to reduce the time taken to assess applications to amend the live import list. Based on experience to date, a period of public consultation on the draft terms of reference inserts little in terms of transparency to the risk assessment process. Generic terms of reference are prepared by the Department of the Environment and Heritage and comments are rarely received. The amendment will allow this phase of public consultation to be optional, so that it can be omitted when the application is not particularly sensitive. Specific stakeholders and the general public still have the opportunity to comment on the draft assessment report.

Items 509 to 510 – Section 303EN

275. These items allow for certain permit conditions to continue to have effect after the permit has expired. This means that certain imports or exports of specimens may have conditions about the future sale, the manner of keeping or any reproduction that may apply for the life of the specimen, or its progeny.

Item 511 – Paragraph 303EP(b)

276. This item amends paragraph 303EP(b) of the Act as a consequence of amendments to section 303EN.

Item 512 – Section 303FJ(b)

277. This item inserts the approved cultivation program to the programs listed in section 303FJ of the Act. The change enables specimens that are or are derived from native species that do not belong to an eligible threatened species (defined in section 303FA) to be commercially exported if they are sourced from an approved cultivation program.

Item 513 – Section 303FLA

278. This item inserts a new section 303FLA into the Act which adds a new category of program entitled “approved cultivation program”. The amendment provides that a specimen is from an approved cultivation program if that specimen was sourced from a program that under the regulations is taken to be an approved cultivation program. The approved cultivation program will enable approval of programs for plants which are unlikely to have an impact on wild specimens but do not meet all the requirements for artificial propagation.

Items 514 to 519 – Section 303GB and 303GC

279. These items allow for certain permit conditions to continue to have effect after the permit has expired. This means that certain imports or exports of specimens may have conditions about the future sale, the manner of keeping or any reproduction that may apply for the life of the specimen, or its progeny.

Item 520 to 523 – Section 303GD

280. These items amend section 303GD of the Act. The amendment to paragraph 303GD(7)(d) follows on from amendments to section 303EE(2)(a) which allows the Minister to accept, for items specified in the regulations, a report prepared by Biosecurity Australia as adequately addressing the environmental risks of import. Such items are therefore not being assessed under the process outlined at section 303EF and so may not have terms of reference for a report. The amendment excludes them from needing terms of reference before being issued with a testing permit. Other items amend section 303GD by inserting the words “in the permitted period” in subsection 303GD(6) and inserting a new subsection 303GD(6A) into the Act which provides a definition of “permitted period” for the purposes of 303GD(6).

Item 524 to 527 – Section 303GE

281. These items allow for certain permit conditions to continue to have effect after the permit has expired. This means that certain imports or exports of specimens may have conditions about the future sale, the manner of keeping or any reproduction that may apply for the life of the specimen, or its progeny. Other items are required as a consequence of amendments to subsection 303GE(5A).

Item 528 to 531 – Section 303GJ

282. These items amend section 303GJ of the Act by inserting a new subsection 303GJ(2) into the Act and repealing the definition of “Tribunal” in subsection 303GJ(3). New subsection 303GJ(2) removes review by the Administrative Appeals Tribunal as an avenue of review for relevant decisions made personally by the Minister. This leaves the merits of these important decisions to be dealt with by

the Government. Decisions made by a delegate of the Minister remain subject to review by the Administrative Appeals Tribunal. The other amendments are required as a consequence of the new subsection 303GJ(2).

Item 532 – Section 304

283. This item amends section 304 of the Act, by replacing paragraph 304(a) to include additional subparagraphs 304(v) to (viii) and subsection 304(2). It extends the coverage of conservation agreements to the protection and conservation of additional Part 3 protected matters – Ramsar wetlands, nuclear actions, Commonwealth marine areas and Commonwealth land.

Items 533 to 539 – Section 305

284. These items amend section 305 of the Act. Amendments to subsections 305(1), 305(1A) and 305(2) are required as a consequence of item 532. These amendments set out the things that the Minister must be satisfied of before entering into a conservation agreement relating to Ramsar wetlands, nuclear actions, Commonwealth marine areas or Commonwealth land. Items 533 and 539 amend section 305 by adding a new subsection 305(3A) into the Act and making word changes in paragraph 305(1)(c). The new subsection requires the Minister to have regard to any approved conservation advice for a listed threatened species or ecological community (as a consequence of new section 266B) when considering whether to enter into a conservation agreement as provided for by section 305. The amendments to paragraph 305(1)(c) are a consequence of the National Heritage List no longer applying to places outside the Australian jurisdiction. The amendment to subsection 305(3) is of a technical nature only and is required as a consequence of item 537.

Items 540 to 543 – Subsections 306(1) and (2)

285. These items amend subsection 306(1) and (2) of the Act by inserting additional subparagraphs (v) to (viii) into paragraphs 306(1)(a) and (b) and paragraphs 306(2)(a) and (b), relating to Ramsar wetlands, nuclear actions, Commonwealth marine areas and Commonwealth land. These amendments are required as a consequence of item 532.

Item 544 – Section 306A

286. This item inserts new section 306A into the Act. This amendment provides that a conservation agreement may declare actions in a specified class do not require approval under Part 9 of the Act. The Minister may not enter a conservation agreement containing such a declaration unless satisfied that the actions to which the declaration relates will not have a significant impact on a matter protected by Part 3 of the Act. The purpose of this amendment is to provide an incentive to landholders to enter conservation agreements.

Item 545 – Section 307A

287. This item inserts a new section 307A into the Act. This amendment expands the scope of conservation agreement to be able to provide for measures to repair or mitigate damage. It introduces a new enforcement option into the Act, as an alternative to costly and time-consuming civil penalty or criminal proceedings. Subsections 307A(1) and (2) provide that where the Minister considers a person has or may have contravened a provision of Part 3 of the Act, the Minister may enter into a conservation agreement with the person that provides for the taking of measures to repair or mitigate damage to the Part 3 protected matter. Parties can

only enter into conservation agreements voluntarily. The provisions in the agreement that specify the taking of these measures are defined in subsection 307A(3) as “remediation provisions”. These provisions may be enforced in the Federal Court.

288. Under subsection 307A(5) of the Act the Minister may apply to the Court for enforcement of a remediation provision. The Court may order compliance with the remediation provision if it determines that the person has contravened the provision. A civil penalty is imposed where a person contravenes a remediation provision. The pecuniary penalty a person can be ordered to pay must not be more than the penalty the Court could order under the relevant provision of Part 3 of the Act.

Item 546 – Section 324B

289. This item repeals section 324B of the Act and has the effect that the National Heritage List will not be able to include places or extend to places and omissions outside the Australian jurisdiction. For overseas places, the inclusion in the National Heritage List is being replaced by a new list called the List of Overseas Places of Historic Significance to Australia and is established by Chapter 5A.

Items 547 to 549 – Section 324C

290. These items amend section 324C of the Act by repealing subsection 324C(2) and substituting a new subsection 324C(2), making required word changes to subsection 324C(1) and repealing the note at the end of the subsection. The amendment to subsection 324C(2) clarifies that the National Heritage List will no longer include places outside the Australian jurisdiction as a consequence of new Chapter 5A. The amendment also sets out requirements for a place to be included in the National Heritage List and specifies that the requirement for the Minister’s satisfaction about the National Heritage values is subject to provisions in new subdivision BB of the Act. This is because, in the emergency process set out in Subdivision BB, the Minister may include a place in the National Heritage List if the Minister believes that a place has, or may have, one or more National Heritage values. Additionally, new subsection 324C(4) confirms that the National Heritage List is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 550 – Sections 324E to 324J

New Subdivision BA of Division 1 of Part 15

291. This item inserts a new subdivision BA of Division 1 of Part 15 of the Act by repealing sections 324E to 324J and replacing them with a series of new provisions that reform the National Heritage nomination and listing process. The new process enables the Minister to set themes, following advice from the Australian Heritage Council, based on an approach that listing is focussed on those places of potential National Heritage value, rather than being driven by the order in which nominations are received. Subdivision BA sets out the usual process for inclusion of places in the National Heritage List. New Subdivision BB sets out the emergency process for inclusion of places in the National Heritage List and new Subdivision BC sets out other provisions relating to the National Heritage List.
292. New section 324E provides a simplified outline of the new usual listing process which involves an annual cycle around 12 month “assessment periods”. The Minister determines the start of the first assessment period (see section 324G), which must be within 12 months of commencement of the section.

293. New section 324H provides that the Minister may determine one or more heritage themes for an assessment period, before inviting nominations for an assessment period. The Minister may seek and have regard to advice from the Australian Heritage Council to assist the making of a determination about heritage themes.
294. Under new section 324J, the Minister is required to publish an invitation for people to nominate places for the National Heritage List before the start of each annual assessment period, where the cut-off date for nominations must be at least 40 business days after the notice is published. The nominations for the National Heritage List must then be given by the Minister to the Australian Heritage Council within 30 business days. The Minister may reject nominations for the reasons set out in 324JA(4).
295. The Council is required to prepare and give the Minister a list called the *proposed priority assessment list* (section 324JB) for the assessment period within 40 business days of receiving the nominations. The Council does not have to include a place in the proposed priority assessment list if it considers that it is unlikely that the place has any National Heritage values. This enables Council to focus its assessment work where it considers it is best directed for a particular assessment period. In this consideration, Council does not have to have regard to information beyond that which was included in the nomination.
296. Nominations can take many forms, and can overlap in whole or part, or may not contain the best overall boundary. Small nominated areas may fall within a larger nominated area. The amendments provide that a place in the list may include parts that came forward for consideration in different ways. For example, one place may include a part that was nominated by a person in the assessment period, a part that was drawn from the immediately preceding assessment period, and a part that was nominated by the Council. This provides an effective means of establishing appropriate boundaries for National Heritage places and for efficiently assessing multiple overlapping, adjacent or linked nominated areas.
297. New section 324JC sets out the matters to be included in a proposed priority assessment list. The Council must give the Minister a statement of the information it considers appropriate about why it did and did not include each place in the proposed priority assessment list (see section 324JD). The statement must also identify places or part of a place that the Council wishes to nominate.
298. Under section 324JE, the Minister may make changes to the proposed priority assessment list within 20 business days of receiving it. At the end of this period, the list is known as the *finalised priority assessment list* for the assessment period. This list is required to be published on the Internet. The Council, under section 324JG, is also required to publish a notice inviting public comments on the places in the finalised priority assessment list, which specifies a cut-off date for comments which is at least 30 business days after publication.
299. The Council must make a written assessment of whether each place in the finalised priority assessment list meets any of the National Heritage criteria. In its assessment, the Council must not consider any matter that does not relate to the question whether the place meets any of the National Heritage criteria (see section 324JH). If the Council considers that a place it is assessing might have one or more National Heritage values, it must take all practicable steps to identify owners or

occupiers of the place and, if Council considers it might have indigenous heritage value, take all practicable steps to identify each indigenous person who has rights or interests in all or part of the place and give them at least 20 business days to comment on whether the place should be included in the National Heritage List. The Council must take into account the comments received in response to the notice under subsection 324JG(1), and may take into account the comments received in response to consultations under paragraph 324JH(5)(c). Subsections 324JJ(6) and (7) provide alternative efficient means of consultation where large numbers of owners or occupiers or indigenous persons with rights or interests are involved. To consult indigenous persons, it allows for appropriately representative bodies to be consulted.

300. The Council is to provide the Minister with its written assessment, a copy of the comments received in response to the notice under subsection 324JG(1) as well as the comments received in response to consultations under paragraph 324JH(5)(c) within 12 months or, if the Council considers an assessment is likely to take longer, the end of that longer period after the start of the assessment period (see section 324JI). The Minister may grant an extension to the assessment period, but the total period of all extensions may not exceed 5 years. The Minister must publish particulars of extensions in a way the Minister considers appropriate.
301. New section 324JJ sets out the process for the Minister's decision about the inclusion of a place in the National Heritage List. The timeframe for the Minister to make a decision is within 90 business days of receipt of the assessment. The Minister may in writing extend the period.
302. Prior to these amendments there was a complex process for the Minister to conduct additional consultation after receiving an assessment from the Australian Heritage Council. Paragraph 324JJ(5)(b) now provides a simple authority for the Minister to seek and consider information from any source in the process of deciding about the inclusion of a place in the National Heritage List.
303. The Minister is required, within a reasonable time, to take all practicable steps to identify and advise owners or occupiers of an assessed place of a decision to include the place or part of the assessed place in the National Heritage List. The item provides an alternative notification means in cases where large numbers of stakeholders are involved. Under subsection 324JJ(8), the person who nominated a place must be advised of the decision and the reasons for the decision.
304. A determination made for the purposes of sections 324G and 324H of the Act are legislative instruments, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the determination.
305. The proposed priority assessment list referred to in section 324JB and the finalised priority assessment list referred to in section 324JE are not legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

New Subdivision BB – Inclusion of places in the National Heritage List: emergency process

306. The previous National Heritage emergency heritage listing process was based on nominations of places for emergency listing which triggered a complex process of consideration in each case with little allowance for appropriate consultation. The new subdivision BB provides for a process more like that for World Heritage

properties under which the Minister can consider the need for emergency listings based on the nature of the threat to any potential National Heritage values the place may have.

307. New section 324K provides a simplified outline of the new emergency listing process for the National Heritage List. New section 324JL provides for the Minister to emergency list a place in the National Heritage List, by instrument in the *Gazette*, if the Minister believes that a place may have one or more National Heritage values, any of those values is under threat of significant adverse impact, and the threat is both likely and imminent.
308. If a place is included in the National Heritage List under the emergency process, and it was already being considered under the usual process in Subdivision BA, the usual process ceases to apply. This would not prevent the usual process restarting if, for example, it ceases to be listed and it is nominated again.
309. Within 10 business days of the emergency listing of a place, the Minister must publish a copy of the instrument for listing on the Internet and take all practicable steps to identify owners or occupiers of all or part of the place and advise each of them that the place has been included in the National Heritage List. There are special provisions if this is likely to number more than 50 people.
310. If the Minister emergency lists a place in the National Heritage List, new section 324JM requires the Minister to request in writing that the Australian Heritage Council give the Minister an assessment of whether it meets any National Heritage criteria, and to specify an assessment completion time. In setting the completion time, it needs to be considered that under subsection 324JQ(1), the Minister must usually come to a decision about whether the place should remain listed within 12 months of the emergency listing, unless no assessment is received, or if the Minister is not satisfied that a place has one or more National Heritage values. The listing ceases if no decision is made within the 12-month period.
311. New section 324JN requires the Council, if it receives a request from the Minister to assess a place emergency-listed in the National Heritage List, to publish a notice inviting public comment on the listing. The notice must invite comments on whether the place meets any National Heritage criteria and whether the place should continue to be included in the National Heritage List and provide a cut-off date for comments which is at least 30 business days after publication.
312. New section 324JO applies the provisions of the usual Council assessment process, in section 324JH and other sections that refer to section 324JH, to the emergency National Heritage listing process. New section 324JO applies the provisions in section 324JI and sections which refer to section 324JI, about the timing by which assessments in the usual National Heritage listing process are to be provided to the Minister, to the emergency National Heritage listing process.
313. For example, the provisions mean that the Australian Heritage Council can seek an extension of the completion time, which was set out in a request for assessment under section 324JM, for assessment of an emergency-listed place from the Minister. As for consideration of completion times under section 324JM, the consideration of an extended completion time would need to take into account the 12-month period referred to in subsection 324JQ(1).

314. New subsection 324JQ(1) provides that the Minister must, subject to certain exceptions, within 12 months of the emergency listing and by instrument in the *Gazette*, either state that the place remains in the National Heritage List with an unaltered boundary, or alter the boundary of the listed place, or remove the place and its National Heritage values from the National Heritage List.
315. If the place is not removed from the National Heritage List, the Minister is to state for example that the values remain as listed under section 324JL, or to include National Heritage values that were not included in the National Heritage List under section 324JL, or remove from the List National Heritage values that were included under section 324JL.
316. The requirement on the Minister to act within 12 months under subsection 324JQ(1) is subject to exceptions. The inclusion in the National Heritage List lapses if no action is taken under subsection 324JQ(1) within the 12-month period.
317. In deciding what action to take under subsection 324JQ(1), the Minister is required to have regard to the Council's assessment against the National Heritage criteria, and the comments given under subsection 324JH(1). The Minister may also seek and have regard to other sources of information for the purpose of deciding upon the action to take.
318. The item excludes the usual non-emergency process under section 324L from applying to an alteration of the boundary of a place, or removal of a place and its National Heritage values, or removal of a National Heritage value of a place from the National Heritage List, under the new subsection 324JQ(1).
319. If the Minister under subsection 324JQ(1), removes an emergency-listed place or National Heritage value from the National Heritage List, or alters its boundary, the Minister must publish a notice on the Internet and advise persons identified as owners or occupiers about the removal or alteration within 10 business days of that action.
320. If the place and its National Heritage values are automatically removed from the National Heritage List under subsection 324JQ(4) because no action is taken within the time period in subsection 324JQ(1), then the Minister must publish a notice on the Internet and advise persons identified as owners or occupiers about the removal within 10 business days.

New Subdivision BC – Other provisions relating to the National Heritage List

321. To avoid any unnecessary duplication, or potential conflict between various listing decisions, the new section 324JR provides linking provisions and a process for coordination of the assessment work of the Australian Heritage Council and the Threatened Species Scientific Committee. The provisions apply if the Council undertakes an assessment under the usual or emergency National Heritage listing processes and is aware that the Scientific Committee is undertaking an assessment, and there is a matter relevant to both assessments. The item also allows communication and exchange of information between the advisory bodies, and relaxes the restrictions on the flow of information that result from section 324R, to allow this exchange.
322. New Section 324JS provides for coordination of the assessment work of the Council and the Scientific Committee. It applies if the Council has given the

Minister an assessment under the usual or emergency National Heritage listing processes and is aware that the Scientific Committee is undertaking an assessment, and there is a matter relevant to both assessments. The Council is required to ensure that the Scientific Committee is made aware of, and given a copy of the assessment. The item also allows discussion of the matters between members the advisory bodies, and relaxes the restrictions on the flow of information that result from section 324R, to allow this exchange.

Items 551 and 552 – Subsection 324K(1)

323. These items amend subsection 324K(1) and are a consequence of new subdivisions BA and BB which provide for the new usual National Heritage listing process and the new emergency National Heritage listing process.

Item 553 – Subsection 324L(1)(note)

324. This item amends section 324L as a consequence of amendments to the National Heritage listing process.

Item 554 – Subsection 324M(6)

325. This item amends section 324M as a consequence of the National Heritage List no longer applying to places outside the Australian jurisdiction.

Item 555 – Section 324N

326. This item replaces a complex process for adding National Heritage values to a place in the National Heritage List, with a provision allowing regulations to be made to provide for this. The regulations may modify provisions of the Act but are not able to increase maximum penalties for an offence or widen any offence.

Items 556 to 560 – Section 324R

327. These items amend section 324R of the Act as a consequence of new subdivisions BA and BB which reform the National Heritage listing process. The amendments also provide that the duty on members of the Australian Heritage Council not to disclose information ceases when the Minister either includes or decides not to include a place in the National Heritage List. They also repeal a provision requiring the Council, once certain statutory deadlines for decisions are passed unmet, to give its assessment to anyone who asks for it. Amendments to subparagraph 324R(2)(b)(ii) provides that the duty on members of the Council not to disclose advice under section 324M ceases when the Minister decides under that section not to remove a place or part of a place, or one or more of its National Heritage values, from the National Heritage List.

328. New subsection 324R(2A) provides that amendments to paragraph 324R(2)(a) do not prevent the Council from informing a person or discussing with a person the consequences of including or not including a place or National Heritage values in the National Heritage List, or removing a place or National Heritage values of a place from the list. The items also remove the duty to not disclose particular information if the Minister gives permission, following a request from the Chair of the Council, to disclose that information to a particular person or persons within a group of persons.

Items 561 and 562 - Section 324S

329. These items amend section 324S by repealing subsection 324S(1) and substituting a new subsection 324S(1) and inserting a new subsection 324S(7) into the Act. New subsection 324S(1) is a consequence of the National Heritage List no longer

applying to places outside the Australian jurisdiction. New subsection 324S(7) confirms that a management plan for a National Heritage place wholly within Commonwealth areas is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. An amendment, or a revocation and replacement of a plan, is also confirmed to be a legislative instrument.

Item 563 – Paragraph 324Y(2)(c)

330. This item amends section 324Y of the Act as a consequence of the National Heritage List no longer applying to places outside the Australian jurisdiction.

Items 564 to 566 – Section 341C

331. These items amend section 341 of the Act by repealing subsection 341C(2) and substituting a new subsection 341C(2), repealing the note at the end of subsection 341C(2) and making required word changes as a consequence of reforms to the Commonwealth Heritage listing process. The new subsection 341C(2) sets out requirements for a place to be included in the Commonwealth Heritage List and specifies that the requirement for the Minister’s satisfaction about the Commonwealth Heritage values is subject to provisions in new Subdivision BB. This is because, in the emergency process set out in Subdivision BB, the Minister may include a place in the Commonwealth Heritage List if the Minister believes that a place has, or may have, one or more Commonwealth Heritage values.

332. Additionally, new subsection 341C(4) is to assist readers to be aware that the Commonwealth Heritage List is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 567 – Sections 341E to 341J

New Subdivision BA – Inclusion of places in the Commonwealth Heritage List: usual process

333. This item inserts a new subdivision BA of Division CA of Part 15 of the Act repealing sections 341E to 341J and replacing them with a series of new provisions that reform the Commonwealth Heritage nomination and listing process. The new process enables the Minister to set strategic directions and priorities for listing following advice from the Australian Heritage Council. The reform allows for listing work to focus on those places of potential Commonwealth Heritage value, rather than being driven by the order in which nominations are received. Subdivision BA sets out the usual process for inclusion of places in the Commonwealth Heritage List. Subdivision BB sets out the emergency process for inclusion of places in the Commonwealth Heritage List. Subdivision BC sets out other provisions relating to the Commonwealth Heritage List.

334. New section 341E provides a simplified outline of the new usual listing process which involves an annual cycle around 12-month “assessment periods”. The Minister determines the start of the first assessment period (see section 341G), which must be within 12 months of the day of commencement of the section.

335. Under new section 341H, the Minister is required to publish an invitation for people to nominate places for the Commonwealth Heritage List before the start of each annual assessment period, where the cut off date for nominations must be at least 40 business days after the notice is published. The nominations for the Commonwealth Heritage List must then be given by the Minister to the Australian Heritage Council within 30 business days. The Minister may reject nomination for the reasons set out in 341J(4).

336. The Council is required to prepare and give the Minister a list called the *proposed priority assessment list* (section 341JA) for the assessment period within 40 business days of receiving the nominations. The Council does not have to include a place in the proposed priority assessment list if it considers that it is unlikely that the place has any Commonwealth Heritage values. This enables Council to focus its assessment work where it considers it is best directed for a particular assessment period. In this consideration, Council does not have to have regard to information beyond that which was included in the nomination.
337. Nominations can take many forms, and can overlap in whole or part, or may not contain the best overall boundary. For example, it has been found that small nominated areas may fall within a larger nominated area. It is not efficient or effective to assess these nominations in isolation. The new section provides that a place in the list may include parts that came forward for consideration in different ways. For example, one place may include a part that was nominated by a person in the assessment period, a part that was drawn from the immediately preceding assessment period, and a part that was nominated by the Council. This provides an effective means of establishing appropriate boundaries for Commonwealth Heritage places and for efficiently assessing multiple overlapping, adjacent or linked nominated areas.
338. New section 341JB sets out the matters to be included in a proposed priority assessment list. The Council must give the Minister a statement of the information it considers appropriate about why it did and did not include each place in the proposed priority assessment list (see section 341JC). The statement must also identify places or part of a place that the Council wishes to nominate.
339. Under section 341JD, the Minister may make changes to the proposed priority assessment list within 20 business days of receiving it. At the end of the 20 business days, the list becomes known as the *finalised priority assessment list* for the assessment period. This list is required to be published on the Internet. The Council, under section 341JF, is also required to publish a notice inviting public comments on the places in the finalised priority assessment list, which specifies a cut-off date for comments which is at least 30 business days after publication.
340. The Council must make a written assessment of whether each place in the finalised priority assessment list meets any of the Commonwealth Heritage criteria. In its assessment, the Council must not consider any matter that does not relate to the question whether the place meets any of the Commonwealth Heritage criteria (see section 341JG). If the Council considers that a place it is assessing might have one or more Commonwealth Heritage values, it must take all practicable steps to identify owners or occupiers of the place and, if Council considers it might have indigenous heritage value, identify each indigenous person who has rights or interests in all or part of the place and give them at least 20 business days to comment on whether the place should be included in the Commonwealth Heritage List. The Council must take into account the comments received in response to the notice under subsection 341JF(1), and may take into account the comments received in response to consultations under paragraph 341JG(5)(c). Subsections 341JG(6) and (7) provide alternative efficient means of consultation where large numbers of owners or occupiers or indigenous persons with rights or interests are involved. To consult indigenous persons, it allows for appropriately representative bodies to be consulted.

341. The Council is to provide the Minister with its written assessment, a copy of the comments received in response to the notice under subsection 341JF(1) as well as the comments received in response to consultations under paragraph 341JG(5)(c) within 12 months or, if the Council considers an assessment is likely to take longer, the end of that longer period after the state of the assessment period (see section 341JH).
342. The Minister may grant an extension, but the total period of all extensions may not exceed 5 years. The Minister must publish particulars of extensions in a way the Minister considers appropriate.
343. New section 341JI sets out the process for the Minister's decision about the inclusion of a place in the Commonwealth Heritage List. The timeframe for the Minister to make a decision is within 90 days of receipt of the assessment. The Minister may in writing extend this period.
344. Prior to these amendments there was a complex process for the Minister to conduct additional consultation after receiving an assessment from the Australian Heritage Council. Paragraph 341JI(5)(b) now provides a simple authority for the Minister to seek and consider information from any source in the process of deciding about the inclusion of a place in the Commonwealth Heritage List.
345. The Minister is required, within a reasonable time, to take all practicable steps to identify and advise owners or occupiers of an assessed place of a decision to include the place or part of the assessed place in the Commonwealth Heritage List. The item provides an alternative means for when large numbers of stakeholders are involved. Under section 341H, the person who nominated a place must be advised of the decision and the reasons for decision.
346. A determination made for the purpose of sections 341G of the Act is a legislative instrument, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the determination.
347. The proposed priority assessment list referred to in section 341JA and the finalised priority assessment list referred to in section 341JD are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

New Subdivision BB – Inclusion of places in the Commonwealth Heritage List: emergency process

348. The previous Commonwealth Heritage emergency heritage listing process was based on nominations of places for emergency listing which triggered a complex process of consideration in each case with little allowance for appropriate consultation. The new Subdivision BB provides for a process more like that for World Heritage properties under which the Minister can consider the need for emergency listings based on the nature of the threat to any potential Commonwealth Heritage values the place may have.
349. New Section 341JJ provides a simplified outline of the new emergency listing process for the Commonwealth Heritage List. New Section 341JK provides for the Minister to emergency list a place in the Commonwealth Heritage List, by instrument in the *Gazette*, if the Minister believes that a place may have one or more Commonwealth Heritage values, any of those values is under threat of significant adverse impact, and the threat is both likely and imminent.

350. If a place is included in the Commonwealth Heritage List under the emergency process, and it was already being considered under the usual process in Subdivision BA, the usual process ceases to apply. This would not prevent the usual process restarting if, for example, it ceases to be listed and it is nominated again.
351. Within 10 business days of the emergency listing of a place, the Minister must publish a copy of the instrument for listing on the Internet and take all practicable steps to identify owners or occupiers of all or part of the place and advise each of them that the place has been included in the Commonwealth Heritage List. There are special provisions if this is likely to number more than 50 people.
352. If the Minister emergency lists a place in the Commonwealth Heritage List, new section 341JL requires the Minister to request in writing that the Australian Heritage Council give the Minister an assessment of whether it meets any Commonwealth Heritage criteria, and to specify an assessment completion time. In setting the completion time, it needs to be considered that under subsection 341JP(1), the Minister must usually come to a decision about whether the place should remain listed within 12 months of the emergency listing, unless no assessment is received, or if the Minister is not satisfied that a place has one or more Commonwealth Heritage values. The listing ceases if no decision is made within the 12-month period.
353. New section 341JM requires the Council, if it receives a request from the Minister to assess a place emergency-listed in the Commonwealth Heritage List, to publish a notice inviting public comment on the listing. The notice must invite comments on whether the place meets any Commonwealth Heritage criteria and whether the place should continue to be included in the Commonwealth Heritage List and provide a cut-off date for comments which is at least 30 business days after publication.
354. New Section 341JN applies the provisions of the usual Australian Heritage Council assessment process, in section 341JG and other sections that refer to section 341JG, to the emergency Commonwealth Heritage listing process. New Section 341JO applies the provisions in section 341JH and sections which refer to section 341JH, about the timing by which assessments in the usual Commonwealth Heritage listing process are to be provided to the Minister, to the emergency Commonwealth Heritage listing process.
355. For example, the provisions mean that the Australian Heritage Council can seek an extension of the completion time, which was set out in a request for assessment under section 341JL, for assessment of an emergency-listed place from the Minister. As for section 341JL, the consideration of an extended completion time would need to take into account the 12-month period referred to in subsection 341JP(1).
356. New subsection 341JP(1) provides that the Minister must, subject to certain exceptions, within 12 months of the emergency listing and by instrument in the *Gazette*, either state that the place remains in the Commonwealth Heritage List with an unaltered boundary, or alter the boundary of the listed place, or remove the place and its Commonwealth Heritage values from the Commonwealth Heritage List. This may result in an increase or decrease of the area in the Commonwealth Heritage List.

357. If the place is not removed from the Commonwealth Heritage List, the provision requires the Minister to state for example that the values remain as listed under section 341JK, or to include Commonwealth Heritage values that were not included in the Commonwealth Heritage List under section 341JK, or remove from the List Commonwealth Heritage values that were included under section 341JK.
358. The requirement on the Minister to act within 12 months under subsection 341JP(1) is subject to exceptions. The inclusion in the Commonwealth Heritage List lapses if no action is taken under subsection 341JP(1) within the 12-month period.
359. In deciding what action to take under subsection 341JP(1), the Minister is required to have regard to the Council's assessment against the Commonwealth Heritage criteria, and the comments given under subsection 341JG(1) to the Minister by the Australian Heritage Council with its assessment. The Minister may also seek and have regard to other sources of information for the purpose of deciding upon the action to take.
360. The item excludes the usual non-emergency process under section 341L from applying to an alteration of the boundary of a place, or removal of a place and its Commonwealth Heritage values, or removal of a Commonwealth Heritage value of a place from the Commonwealth Heritage List, under the new subsection 341JP(1).
361. If the Minister under subsection 341JP(1), removes an emergency-listed place or Commonwealth Heritage value from the Commonwealth Heritage List, or alters its boundary, the Minister must publish a notice on the Internet and advise persons identified as owners or occupiers about the removal or alteration within 10 business days of that action.
362. If the place and its Commonwealth Heritage values are automatically removed from the Commonwealth Heritage List under subsection 341JP(4) because no action is taken within the time period in subsection 341JP(1), then the Minister must publish a notice on the Internet and advise persons identified as owners or occupiers about the removal within 10 business days.

New Subdivision BC – Other provisions relating to the Commonwealth Heritage List:

363. To avoid any unnecessary duplication, or potential conflict between various listing decisions, the new section 341JQ provides linking provisions and a process for coordination of the assessment work of the Australian Heritage Council and the Threatened Species Scientific Committee. The provisions apply if the Council undertakes an assessment under the usual or emergency Commonwealth Heritage listing processes and is aware that the Scientific Committee is undertaking an assessment, and there is a matter relevant to both assessments. The item also allows communication and exchange of information between the advisory bodies, and relaxes the restrictions on the flow of information that result from section 341R, to allow this exchange.
364. New Section 341JR provides for coordination of the assessment work of the Council and the Scientific Committee. It applies if the Council has given the Minister an assessment under the usual or emergency Commonwealth Heritage listing processes and is aware that the Scientific Committee is undertaking an assessment, and there is a matter relevant to both assessments. The Council is required to ensure that the Scientific Committee is made aware of, and given a copy

of the assessment. The item also allows discussion of the matters between members the advisory bodies, and relaxes the restrictions on the flow of information that result from section 341R, to allow this exchange.

Items 568 and 569 – Subsection 341K(1)

365. These items amend subsection 341K(1) of the Act and are a consequence of the new subdivisions BA and BB which provide for the new usual Commonwealth Heritage listing process and the new emergency Commonwealth Heritage listing process.

Item 570 – Subsection 341L(2)(note)

366. This item amends section 341L of the Act as a consequence of amendments to the Commonwealth Heritage listing process.

Item 571 – Section 341N

367. This item replaces a complex process for adding Commonwealth Heritage values to a place in the Commonwealth Heritage List, with a provision allowing regulations to be made to provide for this. The regulations may modify provisions of the Act but are not able to increase maximum penalties for an offence or widen any offence.

Items 572 to 576 – Section 341R

368. These items amend section 341R of the Act as a consequence of new subdivisions BA and BB which reform the Commonwealth Heritage listing process. The amendments provide that the duty on members of the Australian Heritage Council not to disclose information ceases when the Minister decides not to include a place in the Commonwealth Heritage List. The items also repeal a provision requiring the Council, once certain statutory deadlines for decisions are passed unmet, to give its assessment to anyone who asks for it. Amendments to subparagraph 341(2)(b)(ii) provides that the duty on members of the Council not to disclose advice under section 341M ceases when the Minister decides under that section not to remove a place or part of a place, or one or more of its Commonwealth Heritage values, from the Commonwealth Heritage List. New subsection 341R(2A) provides that amendments to paragraph 341R(2)(a) do not prevent the Council from informing a person or discussing with a person, the consequences of including or not including a place or Commonwealth Heritage values in the Commonwealth Heritage List, or removing a place or Commonwealth Heritage values of a place from the List. The items also remove the duty to not disclose particular information if the Minister gives permission, following a request from the Chair of the Council, to disclose that information to a particular person or persons within a group of persons.

Item 577 – At the end of section 341S

369. This item confirms that a management plan for a Commonwealth Heritage place is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. An amendment, or a revocation and replacement of a plan, is also confirmed to be a legislative instrument.

Item 578 - Subsection 341T (note)

370. This item amends section 341T of the Act as a consequence of amendments to the Commonwealth Heritage listing process.

Item 579 – Section 341ZD

371. This item repeals section 341ZD of the Act as a consequence of item 179.

Item 580 – Subdivision F of Division 3A or Part 15

372. This item repeals Subdivision F of Division 3A of Part 15 of the Act as a consequence of item 179.

Item 581 – Paragraph 346(1)(e)

373. This item amends section 346 of the Act by repealing paragraph 346(1)(e) and substituting a new paragraph 346(1)(e). This amendment provides for a Commonwealth reserve to be assigned to an IUCN (World Conservation Union) category. The categories are specified in current paragraph 346(1)(e). The purpose of the item is to allow a simplified amendment process as the IUCN amends the categories over time, and to allow the IUCN categories and the management principles prescribed by the Regulations to be more easily aligned.

Items 582 to 584 – Section 347

374. These items amend section 347 of the Act as a consequence of item 581.

Item 585 – Section 349

375. This item repeals section 349 of the Act that provides for a Commonwealth reserve Proclamation to prescribe special rules for management of a reserve assigned to the IUCN category wilderness area. The section is a hangover from the former *National Parks and Wildlife Conservation Act 1975* which the Act has replaced. The *National Parks and Wildlife Conservation Act 1975* did not incorporate the IUCN category system for parks and reserves, but allowed for areas to be designated as wilderness zones with special rules for their management. These provisions are redundant in light of the IUCN categorisation system in the Act that includes “wilderness area”. The regulations under the Act prescribe the principles by which each category should be managed.

Items 586 to 590 – section 354

376. These items amend section 354 of the Act by inserting new subsections 354(1A) and 354(3A), repealing subparagraph 354(4)(a)(ii) and substituting it with a new subparagraph and removing the notes at the end of subsections 354(1) and 354(2) as a consequence of amendments to section 360 of the Act.

Item 591 – After section 354

377. This item inserts a new section 354A of the Act which makes it an offence for taking an action that is prohibited under subsection 354(1), to strengthen the deterrent value of the provision. The penalty for an offence against the section is imprisonment for 2 years or 1,000 penalty units or both. The item sets out where strict liability applies for each offence and provides exceptions for actions which are: in accordance with a management plan in operation for the reserve; mining operations which are covered by other parts of the Act; certain actions carried out by the Director of National Parks in accordance with the Director’s functions; actions covered by a usage right, or a right arising from a usage right to which section 359 applies; actions covered by section 359A (traditional use by indigenous persons); actions covered by an approval under new subsection 359B(1) of the Act, and actions taken in Antarctica to which certain provisions of the *Antarctic Treaty (Environment Protection) Act 1980* apply. The item also provides for an exemption from custodial penalties for non-citizens caught fishing illegally in the Australian

Exclusive Economic Zone, in accordance with Australia's obligations under the United Nations Convention on the Law of the Sea.

Item 592 to 594 – Section 355

378. These items amend section 355 of the Act. The amendments repeal subsection 355(1) and substitute a new subsection 355(1) which simplifies the approval processes for mining in Commonwealth reserves when this is an allowable activity under a management plan by removing the requirement that the Governor-General must approve all mining operations in Commonwealth reserves. Subsection 355(2) defines “mining operations” very broadly. It covers all activities connected with or incidental to mining or the recovery of minerals, or production of materials from minerals; and includes prospecting or exploration, such as seismic surveys. In marine Commonwealth reserves, where seismic surveys are not uncommon in multiple use areas, the requirement for the Governor-General to approve all mining operations is administratively onerous and establishes a level of regulation not required of other commercial activities that may be allowed in a marine reserve. It duplicates the approval by the Minister for matters under Chapters 2 and 4 of the Act where proposed operations are or may be controlled actions and the rigorous assessment and approval processes under Commonwealth and State resources legislation. However as it would not be appropriate to allow mining in a Commonwealth reserve without some stringent controls, mining operations have been treated in the same manner as actions covered by sub-section 354(1) of the Act. Mining operations, where permitted in a Commonwealth reserve, will be regulated by Chapters 2 and 4 of the Act, and the requirements of the management plan which will allow for an assessment of the impacts on the conservation values of the reserve.
379. Other amendments to section 355 insert subsection 355(3A) which provides for mining operations covered by subsection 355(1) to be taken in a Commonwealth reserve when a management plan is not in operation if they are covered by an approval given by the Director of National Parks under new subsection 359B(2). The amendments also repeal paragraphs 355(5)(b) and (c) and substitutes new paragraph 355(5)(b) as a consequence of new section 355A. New paragraph 355(5)(b) provides that section 355 is subject to section 359A (traditional use by indigenous persons).

Item 595 – After section 355

380. This item inserts a new section 355A into the Act which makes it an offence for conducting a mining operation that is prohibited under subsection 355(1), to strengthen the deterrent value of the provision. The penalty for an offence against the section is imprisonment for 2 years or 1,000 penalty units or both.
381. The item sets out where strict liability applies for the offence and provides exceptions for actions which are: in accordance with a management plan in operation for the reserve; mining operations in Kakadu National Park and Antarctica which are covered by other parts of the Act; actions covered by a usage right, or a right arising from a usage right to which section 359 applies; actions that is covered by section 359A (traditional use by indigenous persons) and actions covered by an approval under new subsection 359B(2).

382. To avoid doubt the item makes it clear that actions related to building or construction or the supply of water in a Commonwealth reserve are not caught by this provision unless they are connected with mining operations.

Item 596 – Section 356, Paragraph 356(1)(j)

383. This item amends section 356 of the Act to insert the words “or prohibit certain kinds of conduct” into paragraph 356(1)(j) to allow regulations under the Act to prohibit, as well as regulate, certain kinds of conduct in Commonwealth reserves. The item brings paragraph 356(1)(j) into line with other regulatory provisions of the Act.

Item 597 – After section 359A

384. This item inserts section 359B into the Act which provides the Director of National Parks may approve actions covered by sections 354 and 354A and mining operations covered by sections 355 and 355A when a management plan is not in operation for a Commonwealth reserve. While the Act provides for Commonwealth reserves to be managed in accordance with management plans, it is not possible for management plans to be in operation at the time a Commonwealth reserve is proclaimed and there can be delays in the development of subsequent plans. During these periods the activities covered by sections 354 and 355 of the Act are currently prohibited, yet they may be consistent with the IUCN category applied to the reserve, and may previously have been carried on lawfully.
385. New subsection 359B(1) allows the Director of National Parks to approve actions covered by section 354 if they were being done lawfully before a Commonwealth reserve is declared, or if they were being done in accordance with a management plan that has since expired. New subsection 359B(2) allows the Director to approve mining operations including both existing and new mining operations.
386. In considering whether to give an approval the Director of National Parks will be subject to section 357 which requires that when a management plan is not in operation for a Commonwealth reserve it must be managed in accordance with the Australian IUCN reserve management principles for the IUCN category to which the reserve is assigned. This item in particular clarifies that new oil and gas activities in Commonwealth reserves, such as the transition from exploration to production, may proceed with the appropriate approvals from the Director of National Parks, notwithstanding the absence of a management plan.
387. New subsection 359B(3) prevents the Director from approving an action in the Antarctic which would be an offence under the *Antarctic Treaty (Environment Protection) Act 1980* or mining operations in Kakadu National Park or the Antarctic.
388. New subsections 359B(4), 359B(5), and 359(6) provide that any approval given may be subject to conditions, that it would come into effect on the day the approval is given or at a later specified date and that the Director may vary or revoke the approval in writing if he considers that the action or mining operation is not being conducted in accordance with the approval. Subsection 359(7) provides that an approval given under subsection 359(1) or 359(2) is not a legislative instrument. It is included to assist readers, as the approval is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

389. Decisions made under section 359B of the Act will be subject to review in accordance with the *Administrative Decisions (Judicial Review) Act 1977* and the decision-making power must be exercised in accordance with section 357 of the Act. The Bill does not provide for review by the Administrative Appeals Tribunal.

Item 598 – Section 360

390. This item repeals section 360 of the Act as a consequence of amendments to section 349.

Item 599 – Subsection 367(5)

391. This item amends section 367 of the Act by repealing subsection 367(5) and substituting a new subsection 367(5) to clarify that Commonwealth reserve management plans can apply to multiple reserves.

Item 600 – Section 373

392. This item amends section 373 of the Act by extending the maximum period of operation of Commonwealth reserve management plans to 10 years to provide greater certainty to stakeholders regarding the management regime for Commonwealth reserves.

Item 601 – Subsection 379(1)

393. This item repeals subsection 379(1) of the Act and inserts a new subsection 379(1) to include a requirement for proposed members of Boards of Management for Commonwealth reserves under the Act to be fit and proper persons. A Board of Management must be established for a Commonwealth reserve that includes indigenous people's land (currently Kakadu, Uluru-Kata Tjuta and Booderee National Parks). Board members are appointed by the Minister. It is not currently clear whether the Minister can take into account matters such as a person's criminal record in deciding whether they are an appropriate person to be appointed. Also, while the Minister may terminate an appointment for misbehaviour the Act does not specify conduct that may constitute misbehaviour; and it is open to doubt whether conduct prior to appointment may constitute misbehaviour. The purpose of this item is to clarify that Board of Management members should be fit and proper persons.

Item 602 – After section 379

394. This item inserts a new section 379A into the Act which provides for criteria for determining whether a person is a fit and proper person to be a Commonwealth reserve Board of Management member to be prescribed by the regulations, and allows the Minister to take other relevant matters into account.

Item 603 – After subsection 382(1)

395. This item amends section 382 of the Act by inserting a new subsection 382(1A) into the Act which provides that the Minister must terminate a Board of Management member's appointment if the Minister is satisfied the person is not a fit and proper person having regard to the matters mentioned in new section 379A of the Act.

Item 604 – Subsection 387(2)

396. This item is a technical amendment to subsection 387(2) of the Act that reflects mining operations in Kakadu are controlled by section 387 of the Act.

Item 605 – After Chapter 5

397. This item inserts a new chapter Chapter 5A into the Act which establishes a new List of Overseas Places of Historic Significance to Australia. The former National Heritage provisions of the Act allowed listing of places with National Heritage significance to Australia outside of the Australian jurisdiction, and extraterritorial provisions of the Act applied to these overseas listed places. This previous application is replaced by the new List. New Chapter 5A provides for symbolic recognition of overseas places of historic significance to Australia through a new list that is totally separate to the existing National Heritage List and is disconnected from the offence provisions. The amendments insert 7 new sections into the Act – 390K, 390L, 390M, 390N, 390P, 390Q and 390R.
398. New section 390K requires the Minister to keep a written record of places under Part 1, called the List of Overseas Places of Historic Significance to Australia. It confirms that the list is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
399. New section 390L provides that the Minister may include a place, and a statement of its historic significance to Australia, in the List of Overseas Places of Historic Significance to Australia if the place is outside the Australian jurisdiction and the Minister is satisfied that the place is of outstanding historic significance to Australia. A place is included in the List of Overseas Places of Historic Significance by a notice published in the *Gazette*, and regulations may specify matters the Minister is to have regard to in considering whether the place is of outstanding historic significance to Australia.
400. New section 390M provides that the Minister may remove a place and the statement of its historic significance to Australia, from the List of Overseas Places of Historic Significance to Australia, or vary the statement of the place's historic significance to Australia in the List of Overseas Places of Historic Significance to Australia. These changes are effected by a notice published in the *Gazette*. Regulations may specify matters the Minister is to have regard to in considering whether to make such changes.
401. New section 390N requires the Minister to inform the Minister for Foreign Affairs and any other Minister whom the Environment Minister believes should be informed of proposals for inclusions in or changes to the List of Overseas Places of Historic Significance to Australia. The Minister is also required to invite comments from these other Ministers, and take their comments into account, before including a place and the statement of its historic significance to Australia, in the List of Overseas Places of Historic Significance to Australia, or changing the List under section 390M.
402. New section 390P provides that the Minister may ask the Australian Heritage Council for advice to assist the Minister to consider the inclusion of a place in the List of Overseas Places of Historic Significance to Australia or to consider changes to the List. The Minister may also seek and have regard to any other source of information or advice.
403. New section 390Q requires the Minister to ensure that up-to-date copies of the List of Overseas Places of Historic Significance to Australia are available free of charge to the public and that an up-to-date copy of the List is available on the Internet. New section 390R places a duty upon a member of the Australian Heritage Council

not to disclose its 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. The duty ceases after the Minister has decided whether to take the action to which the advice relates.

Item 606 – Section 391

404. This item amends the table in subsection 391(3) of the Act by adding a new item 6A. The amendment requires the Minister to consider the “precautionary principle” when deciding whether or not to have a recovery plan for a listed threatened species or ecological community.

Item 607 – Section 391(3) (after table item 6)

405. This item removes the requirement for the Minister to consider information in the Register of the National Estate in making decisions under the Act. The amendment will not be required when the Register of the National Estate ceases to operate as a statutory heritage list. The repeal commences at the end of 5 years starting on the day of commencement of provisions in item 1 of the commencement table.

Item 608 – Section 394

406. This item repeals section 394 of the Act and inserts a new section 394 that provides for Customs officers, in addition to members of the Australian Federal Police, to be ex-officio wardens for the purposes of the Act, so that they do not need to be specially appointed.

Item 609 – Subsection 395(1)

407. This item amends subsection 395(1) of the Act as a consequence of item 608.

Items 610 and 611 – Section 397

408. These items amend section 397 of the Act by inserting a new paragraph 397(1)(c) to provide that Customs officers are ex-officio inspectors for the purposes of the Act, in addition to members of the Australian Federal Police and inspectors under the *Great Barrier Reef Marine Park Act 1975*. The amendments also repeal paragraph 397(3)(a) as a consequence of the change to paragraph 397(1)(c).

Item 612 – Subdivision BA, Division 1, Part 17

409. This item inserts a new Subdivision BA into Division 1 of Part 17 in the Act. Section 399A of the Act provides that the powers of authorised officers outside the territorial sea are to be exercised consistently with UNCLOS. The intent of this amendment is to ensure that authorised officers exercising powers such as boarding foreign vessels in the EEZ, act in accordance with international law.

Item 613 – Division 2 of Part 17

410. This item amends the heading of Division 2 of Part 17 of the Act. This amendment clarifies that the Division applies to both:

- the boarding of vessels, aircraft, vehicles or platforms by authorised officers under section 403 (without warrant); and
- the entering of premises by authorised officers under section 405 (without warrant and by consent).

Items 614 to 622 – Section 403

411. These items amend section 403 of the Act to consolidate it with section 429 of the Act, which has been repealed. Amendments are made to subsections 403(1), (2), (3)

and (4) so they apply in relation to any Australian vessel or aircraft whether inside or outside the Australian jurisdiction (as defined in subsection 5(5)), and they also apply in relation to any other vessel and aircraft, or any vehicle or platform, that is in the Australian jurisdiction.

412. Subsection 403(2) of the Act provides for authorised officers to board vessels and exercise the powers of an authorised officer under section 406, without needing a warrant or consent. The items also insert subsection 403(2A), which reproduces subsection 406(4), which has been repealed. This subsection provides for an authorised officer to require a person to answer questions and produce records or documents. It is necessary for authorised officers who board vessels, aircraft, vehicles or platforms, to continue to be able to exercise the powers of an authorised officer without warrant or consent, given the logistical difficulties, time constraints and other issues that officers encounter in exercising powers under the Act in offshore areas.
413. These amendments also repeal the definition of ‘Australian platform’ in subsection 403(6) of the Act as the term ‘platform’ is used in section 403 to achieve the same effect. Item 616 amends section 403 of the Act as a consequence of item 637. Item 621 inserts new subsections 403(5A) and 403(5B) into the Act. Subsection 403(5A) consolidates the offence provisions in subsections 404(4) and 406(6) into section 403, which have been repealed. Subsection 403(5B) is equivalent to section 84(1BA) of the *Fisheries Management Act 1991* and is required as a consequence of the inclusion of Schedule 1 in the Act.

Items 623 to 628 – Section 404

414. These items amend sections 404 of the Act. These amendments insert subsections 404(1A) and 404(3A) into section 404. They also amend subsections 404(1) and 404(3) to refer to the new subsections (1A) and (3A). In addition, these items make an amendment to subsection 404(1), which is of a technical nature only and also repeal subsection 404(4) as a consequence of item 621.

Items 629 to 631 – Section 405

415. Item 631 amends section 405 of the Act by inserting a new subsection 405(4), which provides that an authorised officer where the occupier of premises has required an authorised officer to produce written identification for inspection, the officer is only entitled to enter the premises or exercise his or her powers upon production of the necessary identification. Items 629 and 630 are of a technical nature only, and are required as a consequence of item 638, which repeals subsection 406(4).

Items 632 to 638 – Section 406

416. These items amend section 406 of the Act by replacing the reference to evidential material in subparagraphs 406(1)(b) and (c) with 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. These amendments are a consequence of item 637.
417. Item 633 amends subsection 406(1) of the Act by inserting a new paragraph 406(1)(ba) which is equivalent to section 84(1)(aaa) of the *Fisheries Management Act 1991*. It provides for an authorised officer who boards a vessel under section

403 to search a person and the person's clothing. This amendment is required as a consequence of the inclusion of Schedule 1 in the Act.

418. Items 635, 636 and 638 are of a technical nature only, replacing "this Act" with "section 444A or 445" in paragraph 406(1)(d) of the Act and in subsection 406(1)(e) replacing "paragraph (a), (aa), (b), (c), (ca) or (d)" with "any of the other paragraphs in this subsection". These amendments also repeal subsections 406(4), 406(5) and 406(6) of the Act as a consequence of item 621.
419. Item 637 replaces subsection 406(2) of the Act and provides for the definition of "evidential material" in subsection 406(2) to be extended to cover evidence of the contravention of civil penalty provisions, in addition to evidence of offences. It enables the scope of entry, search and seizure powers of authorised officers to be broadened to encompass evidence of civil penalty provision contraventions. Parliament has already indicated the seriousness of civil penalty breaches under the Act as reflected by the substantial size of penalties available under the Act.
420. The *Therapeutic Goods Act 1989* (TGA) was recently amended to expand the scope of search warrants so that an authorised person could seek a search warrant for criminal purposes, a search warrant for civil purposes, or a search warrant for both civil and criminal purposes. The amendments to the Act, like the TGA amendments, arise out of the fact that often the regulated conduct under the respective Acts has both civil and criminal penalties attached. There are circumstances where a regulated action is being investigated however it is unclear as to whether the breach is civil or criminal in nature. Accordingly, it is necessary to create a single streamlined process for search and seizure which will allow evidential material to be more effectively and efficiently seized and used in both civil and criminal matters.

Item 639 – At the end of Division 2 of Part 17

421. This item amends section Division 2 of Part 17 of the Act by inserting new sections 406A and 406B into the Act. Section 406A is equivalent to section 84(1)(aaa) of the *Fisheries Management Act 1991*. It relates to searches of a person and the person's clothing under paragraph 406(1)(ba). This amendment is required as a consequence of the inclusion of Schedule 1 in the Act. Section 406B clarifies that a reference in this Act to a thing seized under Part 17 or this Act does not include a reference to a thing that has been taken into possession under section 406A or Schedule 1.

Items 640 to 644 – Section 407

422. These items amend section 407 of the Act. The amendments insert a "(1)" before "For the purposes of". They also insert a new paragraph 407(1)(cb) to include as an additional monitoring power, the power to mark a live specimen on the premises. A new subsection 407(2) is inserted which clarifies that to 'mark' a live plant on specimen means to label or tag the plant and container in which the plant is kept, and to 'mark' a live animal means to microchip, band, tag the animal or place a label on the cage in which the animal is kept. Subsections 407(3), (4) and (5) provide for compensation to be payable to the owner of the specimen, or a cage or container in which a specimen is kept, if the damage is caused to the specimen, cage or container as a result of insufficient care being exercised by the authorised officer in exercising the power to mark. The right to compensation is modelled on section 3M of the *Crimes Act 1914*. A consequential amendment is also made to

paragraph 407(1)(e). Item 642 inserts a new paragraph 407(1)(da), which provides for an additional monitoring power to operate electronic equipment at premises under section 407A.

Item 645 – After section 407A

423. This item inserts new sections 407A and 407B into the Act. Section 407A provides for authorised officers who are exercising monitoring powers under Part 17, under warrant or by consent, to operate electronic equipment at premises to see whether evidential material or other relevant material is accessible. The amendment also provides for any relevant material to be seized, put into documentary form or transferred to a disk, tape or other storage device. Part 17 applies to things seized as if they had been seized under section 445. Section 407B provides that if damage is caused to electronic equipment operated at premises under section 407A due to insufficient care, then compensation for damage is payable to the equipment's owner.

Item 646 – Section 408

424. This item amends subsections 408(1) and (2) of the Act by replacing “are being” with “have been, are being or will be”.

Items 647 to 650 – Section 409

425. Item 647 inserts a note at the end of subsection 409(1) of the Act which references the fact that urgent applications for monitoring warrants can be made by telephone or other electronic means under section 409A of the Act. Item 648 amends subsection 409(2) by replacing “are being” with “have been, are being or will be”. Item 649 amends subsection 409(3) by replacing “authorised person” with “authorised officer” and item 650 replaces paragraph 409(4)(a), so that the authorised officer named in a monitoring warrant as the person responsible for executing the warrant, can substitute another person as the executing officer.

Item 651 – After section 409A

426. This item inserts new sections 409A and 409B into the Act. Section 409A provides for an authorised officer to apply for a monitoring warrant by telephone, telex, fax or other electronic means in urgent cases or where delay would frustrate the effective execution of the warrant. Before applying for the warrant the authorised officer must still prepare information setting out the grounds on which the warrant is sought and of the necessity to enter the premises, but if necessary the authorised officer may apply for the warrant before the information is sworn or affirmed. If the magistrate is satisfied that there are reasonable grounds for doing so, he or she may then issue a warrant as if the application had been made under section 409.

427. The authorised officer must complete a form of warrant in substantially the same terms as advised by the magistrate and record the name of the magistrate and the time and date on which the warrant was signed. The authorised officer must send this form of warrant to the magistrate within 48 hours of the application for the warrant. However, the court may admit evidence obtained under the warrant, even if the 48 hour time limit is not complied with, if the court is satisfied that it was not practicable to comply with the limit.

428. Section 409B provides that when an authorised officer is executing a warrant they are to be in possession either of the original warrant issued by a magistrate under section 409 (or a copy of the original warrant) or the original form of warrant

completed under subsection 409A(6) (or a copy of the original form so completed). This amendment clarifies that it is sufficient for the officer executing a monitoring warrant to be in possession of a copy.

Items 652 and 653 – Subsections 410(1) and (2)

429. These items are of a technical nature only. They replace “authorised officer named in the monitoring warrant” with “executing officer” in subsections 410(1) and (2) of the Act.

Items 654 and 655 – Subsections 412(1) and (2)

430. These items are of a technical nature only. They replace “authorised officer named in a monitoring warrant” with “executing officer” in subsection 412(1) of the Act and replace the reference to “authorised officer” with “executing officer” in subsection 412(2) of the Act.

Items 656 to 659 – Subsections 412A(1) and (2)

431. These items amend section 412A of the Act and are of a technical nature only, required as a consequence of item 637. In addition, they replace various references to “authorised officer” with “executing officer”.

Items 660 to 663 – Subsections 413(1) and (2)

432. These items amend section 413 of the Act by requiring that information may be given on affirmation, and not just on oath. They also broaden the references to “evidential material” as a consequence of item 637.

Items 664 to 673 – Section 414

433. These items amend section 414 of the Act by repealing paragraphs 414(1)(d) and 414(1)(f) and substituting new paragraphs 414(1)(d) and 414(1)(f). These paragraphs provide that unless the authorised officer inserts the name of another authorised officer in the warrant, he or she is responsible for executing the warrant and that a warrant must state whether premises may be entered, or a person may be searched, at any time of the day or night or only during particular hours. Items 664, 667, 668, 669, 670, 671, 672 and 673 are of a technical nature only and are a consequence of item 637. They broaden the references to “evidential material” in section 414.

Items 674 to 676 – Section 416

434. Item 674 amends section 416 of the Act by replacing reference to “authorised person” with “authorised officer” in subsection 416(1). Items 675 and 676 amend subsections 416(3) and (7) of the Act by requiring that information may be given on affirmation, and not just on oath.

Items 677 to 685 – Section 417

435. These items are of a technical nature only and are a consequence of items 637 and 666. They broaden the references to “evidential material”, replace subsection 417(3) of the Act which relates to the hours when premises and persons may be searched under warrant and amend subsection 417(4) of the Act by replacing the reference to “the warrant” with “a warrant”.

Item 686 – Section 418A

436. This item inserts a new section 418A into the Act. It provides that when an authorised officer is executing a warrant they are to be in possession either of the original warrant issued by a magistrate under section 415 (or a copy of the original

warrant) or the original form of warrant completed under subsection 416(6) (or a copy of the original form so completed). This amendment clarifies that it is sufficient for the officer executing a search warrant to be in possession of a copy.

Items 687 to 689 – Section 422

437. These items are of a technical nature only and are a consequence of item 637. They broaden the references to “evidential material” in section 422 of the Act.

Item 690 – Division 5 of Part 17

438. This item repeals Division 5 of Part 17 of the Act. Amendments to section 403 of the Act have made this Division superfluous.

Items 691 and 692 – Section 430

439. These items amend subsection 430(2) of the Act through the insertion of an additional subsection 430(2A).

Items 693 and 694 – Sections 432 and 433

440. These items are of a technical nature only. They broaden the reference to “evidential material” in sections 432 and 433 of the Act as a consequence of item 637.

Item 695 – Section 433A

441. This item inserts a new section 433A into the Act. This section clarifies that Division 6 of Part 17 of this Act is not limited by or does not limit Schedule 1. Particularly, the detention of a person under Schedule 1 does not constitute the arrest of the person under Division 6 of Part 17 of this Act.

Item 696 – After Division 6 of Part 17

442. This item inserts a new Division 6A to Part 17 of the Act that relates to the detention of suspected non-citizen offenders. This item also inserts a new section 433B into the Act which gives effect to new Schedule 1 of the Act, at the end of the Act.

Items 697 to 700 – Section 437

443. These items amend paragraphs 437(a) to (d) of the Act as a consequence of item 651.

Item 701 – Section 438

444. This item amends section 438 of the Act by replacing subsections 438(1) and (2) and inserting subsections 438(3) and (4). The amendments remove the reference to a thing seized under Division 5 in subsection 438(1), as this only relates to section 429 which, as a result of its consolidation into section 403, is being repealed. This amendment also provides for the Secretary to cause reasonable steps to be taken to return a thing as soon as the retention period has ended, unless one of the exceptions in subsection 438(4) apply, including that the thing is forfeited or forfeitable to the Commonwealth.

Item 702 – Section 439

445. This item repeals section 439 of the Act. This is a consequence of the consolidation of sections 403 and 429. Section 439 is no longer required as it only related to section 429.

Item 703 to 705 – Section 442

446. Item 703 amends paragraph 442(3)(b) of the Act as a consequence of item 614. The other items amend subsection 442(5) through the insertion of an additional subsection 442(6).

Items 706 and 707 – Section 443A

447. Item 706 amends section 443A of the Act through the insertion of an additional subsection 443A(2A). This amendment provides for an authorised officer to ask questions of a person in the presence of the person, or by sending the questions in writing to the person. However, the latter option is restricted to authorised officers who are not members of a police force or Customs. Item 707 amends section 443A by replacing paragraph 443A(7)(c) as a consequence of item 706.

Items 708 and 709 – Section 444A

448. These items amend section 444A of the Act. They insert a “(1)” before “An” and insert a new subsection 444A(2). This amendment clarifies that seizure powers under section 444A of the Act are not available if there is a search warrant.

Item 710 – Section 444F

449. This item repeals section 444F of the Act as a consequence of its consolidation into new section 449BA.

Items 711 to 713 – Section 444G

450. These items amend section 444G of the Act. These amendments repeal paragraph 444G(1)(e) and the second sentence in subsection 444G(2). They also insert subsections 444G(3) and (4) which provide for the Secretary to take reasonable steps to return a thing as soon as the retention period has ended, unless one of the exceptions in subsection 444G(4) apply, including that the thing is forfeited or forfeitable to the Commonwealth.

Items 714 and 715 – Section 444H

451. These items amend section 444H of the Act as a consequence of new section 449BA.

Items 716 and 717 – Section 444J and 444K

452. These items repeal section 444J and 444K of the Act as a consequence of new sections 450A and 450B.

Item 718 – Subdivision A of Division 10 of Part 17 (heading)

453. This item replaces the heading of Subdivision A of Division 10 of Part 17 of the Act and is required as a consequence of item 719.

Item 719 – Section 445

454. This item amends section 445 of the Act by replacing the section with subsections 445(1), (2), (3) and (4). This amendment provides for the seizure of things other than specimens involved in a contravention of Part 13A (which are dealt with under section 444A). A thing is defined in subsection 445(1) as including a vehicle, vessel, aircraft, platform, document, organism and specimen. This amendment clarifies that seizure powers under section 445 of the Act are not available if there is a search warrant. The seizure powers in Division 4 of Part 17 of the Act will apply to things found during the course of a search under warrant.

Items 720 and 721 – Section 446

455. These items amend section 446 of the Act by replacing subsections 446(1), (2) and (3) and amending subsection 446(4) to refer to “the thing”. This amendment provides for the retention of things seized under section 445 of the Act. The Secretary is to cause reasonable steps to be taken to return a thing as soon as the retention period has ended, unless one of the exceptions in subsection 446(1C) apply, including that the thing is forfeited or forfeitable to the Commonwealth. Under subsection 446(2) of the Act an authorised officer may apply to a magistrate to extend the retention period.

Item 722 – Section 447

456. This item repeals section 447 of the Act as a consequence of new section 449A.

Item 723 – Section 448

457. This item repeals section 448 of the Act as a consequence of its consolidation into new section 449BA.

Item 724 – Subdivision B of Division 10 of Part 17 (heading)

458. This item replaces the heading of Subdivision B of Division 10 of Part 17 of the Act and is required as a consequence of the insertion of section 449A.

Items 725 to 730 – Section 449

459. Items 725, 726 and 730 are of a technical nature only and amend subsections 449(1) and (2) of the Act. Item 727 amends sub-paragraph 449(1)(b)(v) by inserting ‘or specimen’ each time after ‘organism’ to clarify that the paragraph covers specimens as well as organisms. These insertions are required because it is not clear that all things included in the definition of specimens would be covered by the definition of ‘organism’ in section 528 of the Act. Items 728 and 729 insert a new paragraph 449(1)(vi) and a new subsection 449(1A) into the Act. These amendments provide for the ‘euthanasia’ of live animals in cases where it is reasonably likely that retention of the animal would result in the animal suffering.

Item 731 – At the end of Subdivision B of Division 10 of Part 17

460. This item inserts a new section 449A into the Act. This section provides for the Secretary to dispose of an item seized under Part 17 of the Act if the person cannot be located or identified, the steps to return the item have not succeeded, or it is not otherwise practicable to return the seized item, for example where the item is contaminated.

Item 732 – After Subdivision B of Division 10 of Part 17

461. This item inserts a new Subdivision BA of Division 10 of Part 17 into the Act. Section 449BA, which consolidates repealed sections 444F and 448 of the Act, provides that the Secretary may authorise a thing seized under Part 17 of the Act to be released to its owner either conditionally or unconditionally. Section 449BA provides that if a thing seized under Part 17 of the Act is conditionally released to a person, then the provisions in Part 17 will continue to apply to it as if it had not been seized. The return or delivery of the thing to the person under Part 17 of the Act will equate to the release being made unconditional.

Item 733 – Subdivision C of Division 10 of Part 17 (heading)

462. This item replaces the heading of Subdivision C of Division 10 of Part 17 of the Act. This subdivision encompasses all forfeiture provisions including new sections 450A and 450B of the Act.

Item 734 and 735 – Section 450

463. Item 734 amends section 450 of the Act by replacing “seized under this Act” with “taken into possession under section 406A or Schedule 1” in subsection 450(2). Item 735 inserts new subsection 450(3) which provides for the court to order the forfeiture of a specimen to the Commonwealth, in cases where the proceedings are finalised and there are reasonable grounds for the Court suspecting that if the specimen were released to its owner or the person from whom it was seized, the possession of the specimen would constitute a contravention of the Act or regulations.

Item 736 – At the end of Subdivision C of Division 10 of Part 17

464. This item inserts new sections 450A and 450B into Subdivision C of Division 10 of Part 17 of the Act. Section 450A provides that the Court may, on the application of the Secretary, order that a thing seized under Part 17 of the Act is to be forfeited to the Commonwealth. Section 450B provides for a thing seized under Part 17 of the Act to be forfeited to the Commonwealth either conditionally or unconditionally.

Items 737 and 738 – Subdivisions D and E of Division 10 of Part 17 (heading)

465. These items repeal the headings of Subdivisions D and E of Division 10 of Part 17 of the Act and are required as a consequence of item 733.

Item 739 – Section 452

466. This item amends section 452 of the Act by inserting a new paragraph 452(1)(d) providing that a person must deliver a thing to the Secretary if the Secretary so requests.

Item 740 – Subdivision F of Division 10 (heading)

467. This item replaces the heading of Subdivision F of Division 10 of Part 17 of the Act and is required as a consequence of amendments to sections 453 and 454.

Items 741 to 747 – Sections 453 and 454

468. These items amend sections 453 and 454 of the Act by adding references to ‘or specimens’ in subsections to clarify that these sections covers specimens as well as organisms. These insertions are required because it is not clear that all things included in the definition of specimens would be covered by the definition of ‘organism’ in section 528 of the Act.

Item 748 – Subdivision G of Division 10 of Part 17 (heading)

469. This item replaces the heading of Subdivision G of Division 10 of Part 17 of the Act and is required as a consequence of amendments to section 455 and 456.

Items 749 and 750 – Section 455

470. These items amend section 455 of the Act by replacing the references to “goods” with “things”, so that the section is no longer limited in its application.

Items 751 to 756 – Section 456

471. These items amend section 456 of the Act by replacing references to “goods” with “things” and repealing subsection 456(2) in order to make it clearer that this section does not just apply to goods.

Item 757 – At the end of Division 10 of Part 17

472. This item inserts Subdivision H into Division 10 of Part 17 of the Act. This amendment provides authorised officers with the power to seize and appropriately deal with cages or containers containing seizable things, including powers to deal

with non-seizable things contained in seized cages or containers. This amendment will enable seizures to be undertaken in a more certain and efficient manner.

473. Section 456AA provides the power for an authorised officer to seize a cage or container which contains a seizable thing in circumstances where it is not reasonably practicable to seize the seizable thing without also seizing the cage or container.
474. Section 456AB provides that a cage or container may be retained for as long as the authorised officer considers it reasonably necessary to house the seizable thing. As soon as practicable after the expiry of the retention period for the seizable thing, the Secretary is to cause reasonable steps to be taken to return the cage or container, unless one of the exceptions in subsection 456AB(4) apply, including that the cage or container is forfeited or forfeitable to the Commonwealth.
475. Section 456AC provides for the retention of non-seizable things that are contained in a cage or container. As soon as practicable after the expiry of the retention period for the non-seizable thing, the Secretary is to cause reasonable steps to be taken to return the thing, unless one of the exceptions in subsection 456AC(4) apply, including that non-seizable thing is forfeited or forfeitable to the Commonwealth.

Items 758 to 762 – Sections 472 and 473

476. These items amend sections 472 and section 473 of the Act to remove review by the Administrative Appeals Tribunal as an avenue of review for relevant decisions made personally by the Minister. This leaves the merits of these decisions to be dealt with by the Government. Decisions made by a delegate of the Minister remain subject to review by the Administrative Appeals Tribunal.

Item 763 – Section 478

477. This item repeals section 478 of the Act. This amendment brings the Act into line with other Commonwealth legislation where the Federal Court has the discretion whether or not to require an applicant for an injunction to give an undertaking as to damages as a condition of granting an interim injunction.

Item 764 – After Division 14 of Part 17

478. This item introduces new Divisions 14A and 14B into Part 17 of the Act.
479. Division 14A of Part 17 of the Act confers on the Federal Court a general power to make a remediation order requiring a person to take action to repair or mitigate damage that has been, will be, or is likely to be caused to the environment by a contravention of the Act or the Regulations. It extends the pre-existing power of the Court under sections 475 and 476 of the Act, which is contingent on the grant of an injunction.
480. Section 480A provides that the Court may make a remediation order requiring a person to take remediation action to repair or mitigate damage to the environment caused by the contravention, if a person has engaged in conduct constituting an offence or other contravention of the Act or the Regulations. Application for a remediation order may only be made by the Minister.
481. Section 480B provides that the Minister may apply to the Court to discharge or vary an order. Section 480C provides that the powers conferred on the Federal Court under Division 14A are in addition to any other powers of the Court.

482. Division 14B of Part 17 confers on the Minister a general power to make a remediation determination requiring a person to take action to repair or mitigate damage that has been, will be, or is likely to be caused to a matter protected by the contravention of a Part 3 civil penalty provision. It introduces a new enforcement option into the Act, as an alternative to costly and time-consuming civil penalty or criminal proceedings. The new measures will enhance the measures available to repair or mitigate environmental damage resulting from a contravention of a provision of Part 3 of the Act.
483. Section 480D provides that the Minister may make a remediation determination if he or she considers that a person has contravened a civil penalty provision of Part 3 of the Act and it is desirable to make the order. Subsection 480D(3) of the Act provides that a remediation determination is not a legislative instrument, thereby confirming the status of a remediation determination under the *Legislative Instruments Act 2003*.
484. Section 480E sets out the contents of a remediation determination, both mandatory and discretionary. Section 480F provides that before the Minister makes a remediation determination requiring action to be taken on land that is not owned or occupied by the person who is the subject of the determination, the Minister is to take all practicable steps to notify and seek comment from the owner or occupier of all or part of the land. Section 480H specifies when the determination comes into force and how long it remains in force.
485. Section 480J provides for Ministerial reconsideration of a remediation determination. A person must apply for a reconsideration within 20 days of receiving a copy of the determination.
486. Section 480K provides for the Federal Court to set aside a remediation determination. The Court must not set aside the remediation determination unless it is satisfied as mentioned in subsection 480K(2), such as being satisfied that the specified action did not occur or was not a contravention of the specified civil penalty provision.
487. Section 480L provides that upon application by the Minister, the Federal Court may order compliance with a remediation determination or may make any other order that the Court considers appropriate.
488. Section 480M imposes a civil penalty for contravention of a remediation determination, with a maximum penalty equivalent to the penalty the Court could order for contravention of the relevant provision of Part 3 of the Act. Section 480N provides that the Minister may vary or revoke a remediation determination.

Item 765 – Section 486

489. This item repeals section 486 of the Act as a consequence new Division 15A of the Act.

Item 766 – At the end of Division 15 of Part 17

490. This item introduces a new Subdivision C into Division 15 of Part 17 of the Act which provides for the Minister to accept enforceable financial undertakings in relation to contraventions of Part 3 civil penalty provisions. The intention of this amendment is to enable the Minister to accept an enforceable undertaking from a person as a means of, in effect, avoiding costly and time-consuming litigation in

connection with an alleged contravention of a Part 3 civil penalty provision. It is modelled on enforceable undertaking provisions in other Commonwealth legislation, including sections 87B and 87C of the *Trade Practices Act 1974*.

491. Section 486DA of the Act provides that the Minister may accept a written undertaking given by a person to pay a specified amount where the Minister considers that the person has contravened a Part 3 civil penalty provision. The amount the person undertakes to pay will be a proportion of the maximum penalty for the civil penalty provision and will be negotiated between the Minister and the person.
492. Section 486DB provides that if the person fails to comply with the undertaking, the Minister may apply to the Federal Court for an order enforcing the terms of the undertaking.

Item 767 – After Division 15 of Part 17

493. This item inserts a new Division 15A into Part 17 of the Act, which enables the Minister to issue notices to produce and attend. This amendment provides for the inclusion of an essential component for an effective enforcement regime in the Act.
494. Section 486E provides for the Minister to issue notices to produce and attend where 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 contravention of the Act.
495. Section 486F provides for the Minister, by written notice, to require a person to give information or a book, record or document specified in the notice to an official. This item also inserts a maximum penalty for the contravention of subsection 486F(1) of imprisonment for 6 months for failure to provide information or a book, record or document to an official.
496. Section 486G provides for the Minister, by written notice, to require a person to attend to answer questions put by an official and to produce books, records or documents specified in the notice to an official. This item also inserts a maximum penalty for failure to appear or failure to provide information or a book, record or document to an official of imprisonment for 6 months.
497. Section 486H provides that notices must not be given to a person who is, or has been, a lawyer for the person suspected of committing an offence or civil penalty contravention against the Act or Regulations.
498. Section 486J discharges an individual providing information or a document from any threat of civil proceedings on the basis of that information or document. However, it abrogates the privilege against self-incrimination, such that an individual can be liable to criminal sanctions if they fail to properly comply with the requirement to provide information or documents.
499. As set out in subparagraphs 486J(2)(e)(i), (ii) and (iii) of the Act, information or a document given under sections 486F and 486G could be admissible in criminal proceedings if it provides evidence of less than full compliance with a requirement to give information or a document under that clause. Without this provision, there would be an inconsistency with subsections 486F(3), 486G(3) and (4), section 491, and sections 137.1 and 137.2 of the *Criminal Code*, all of which assume it is possible to prosecute a person for failure to properly comply with a requirement to

give information or a document under sections 486F and 486G of the Act. To ensure the effective enforcement of these provisions, it is considered essential to abrogate the privilege against self-incrimination in these cases. This also accords with the principle that it is not appropriate to allow the privilege against self-incrimination to give immunity for deception offences.

Item 768 – After subparagraph 495(2)(a)(vii)

500. This item amends paragraph 495(2)(a) of the Act by inserting subparagraph (viiia). The inclusion of the reference to Section 27C corrects an oversight in the Act.

Item 769 – After Division 18 of Part 17

501. This item inserts Division 18A into Part 17 of the Act, which provides for the liability of landholders for the actions of another person which took place on an area of land in contravention of the Act. Section 496A defines a landholder as a person who is the owner, lessee or occupier of the area of land on which the contravention took place.
502. Section 496B provides that a landholder can be liable to pay a civil penalty for a contravention that took place on the area of land. Section 496C extends criminal responsibility to a landholder for an action taken on the land which contravenes an offence provision in the Act. A landholder can only be made liable for a limited number of serious civil penalty provisions and offences contained in the Act.
503. The civil penalty and offence provisions are modelled on Division 18 of Part 17 of the Act and contain a variety of elements which must be satisfied before a landholder could be liable for a contravention under the Act. While liability is dependent on proof of a principal contravention, the other elements of the provisions require evidence of recklessness and failure to take reasonable steps to prevent the principal contravention, in circumstances where the landholder had the capacity to directly influence the conduct of the principal offender. These limitations create important constraints on the accessorial liability to which these provisions relate.
504. Section 496D sets out the factors that a court is to have regard to in determining whether a landholder failed to take all reasonable steps to prevent a contravention.

Items 770 and 771 – Section 497

505. These items amend subsection 497 of the Act. Firstly, they amend subsection 497(1) through the inclusion of “section 142B or” after the word “against”. This amendment provides for the extension of the infringement notice scheme beyond offences against the regulations to an offence against section 142B (breach of conditions attached to an approval). The existing procedural scheme for infringement notices which is set out in Part 14 of the EPBC Regulations will apply to the extended scheme. Secondly, they amend subsection 497(2) by replacing the words “must equal” with the words “must not exceed”. This means that a maximum penalty under the infringement notice scheme must not exceed one-fifth of the maximum fine a court could impose as a penalty for the particular offence.

Items 772 and 773 – Section 498A

506. These items amend subsections 498A(1) and 498A(2) of the Act, which protect authorised officers from liability for acts done in good faith in the exercise of their powers under the Act, to insert reference to new Schedule 1 of the Act. These items clarify the application of section 498A in relation to the Schedule.

Item 774 – At the end of Part 17

507. This item inserts a new Division 22 into Part 17 of the Act, which extends the scope of liability under the Act to make corporations and non-corporate principals and employers liable for actions taken on their behalf. Section 498B is based on section 64 of the *Great Barrier Reef Marine Park Act 1975* and section 84 of the *Trade Practices Act 1974*. It defines the circumstances in which corporations, principals and employers are deemed to have acted through their officers, agents and employees.
508. These provisions are considered to provide an appropriate basis for liability in the case of environmental offences because, for large corporations, the relevant decisions are usually made by managers at the operational level, rather than by the directing minds of the body corporate. Those decisions result in significant and often irreversible impacts on matters of national environmental significance. It is important to create incentives for large corporations, principals and employers to take steps to ensure that the Act is complied with when such decisions are made. Therefore it is considered justified to depart from Part 2.5 of the Criminal Code in relation to corporate criminal responsibility.
509. A defence is provided in relation to the conduct of the corporation, principal or employer if they took reasonable precautions or exercised due diligence.

Item 775 – Paragraph 503(a)

510. This item amends section 503 of the Act as a consequence of the new section 266B.

Item 776 to 778 – Section 514

511. These items amend section 514 of the Act by inserting paragraphs 514B(1)(ba) and 514B(1)(h) and repealing the note to subsection 514B(1) and substituting two new notes. New paragraph 514B(1)(ba) of the Act extends the functions of the Director of National Parks to allow the Director to contribute to the protection, conservation and management of biodiversity and heritage in areas outside Commonwealth reserves and conservation zones established under the Act. Paragraph 514B(1)(h) is a technical amendment only to clarify that additional functions may be conferred on the Director of National Parks under the Act as well as under other Acts. The two new notes refer to the Minister's capacity to give directions to the Director of National Parks, and to delegate functions to the Director.

Item 779 – After section 517

512. This item inserts a new section 517A into the Act. This amendment allows the Minister to give an exemption for activities in an area that might impact on protected species which have been introduced into an area. The species must be a listed threatened species, a listed migratory species or a listed marine species. Previously if a person(s) introduced a protected species into an area which were subsequently harmed, the civil penalty and criminal offence provisions of the Act applied. This amendment avoids the situation of a person(s) inadvertently breaching the Act when the person(s) intention is to promote the survival of the species.
513. The amendment to subsection 517A(4) of the Act provides the Minister with the ability to consider any information which is relevant to the application for exemption. Subsection 517A(9) clarifies that these exemptions are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

514. In a prosecution for a criminal offence against a provision mentioned in subsection 517A(1), the defendant bears an evidential burden in relation to the matters in subsection 517A(7). In this amendment the burden of proof is reversed as the matters that need to be established in subsection 517A(7) are within the knowledge of the defendant.

Item 780 – After section 520

515. This item inserts a new section 520A into the Act. This amendment is to clarify for the users of the Act that the Minister may issue, in writing, statements about how the Minister considers the Act or regulations would apply. Such statements issued by the Minister are not intended to be legally binding on users of the Act but rather to provide guidance to users of the Act. Subsection 520A(2) is included to assist readers and is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 781 and 782 – Section 525

516. These items provide that land in Christmas Island Territory and the Territory of Cocos (Keeling) Islands is not a Commonwealth area if a person holds a freehold interest in the land, despite subparagraph 525(1)(c)(i) of the Act, which specifies that land in an external territory other than Norfolk Island is a Commonwealth area. This does not prevent such an area from being Commonwealth land because of another paragraph of subsection 525(1) of the Act, for example because the area is held under lease by the Commonwealth or a Commonwealth agency.
517. The provision recognises that alternative means to the Commonwealth Heritage List can be put in place to ensure the ongoing protection of heritage places on “freehold land” in the Cocos Keeling Islands and Christmas Island. For heritage property owners in these territories, it will have the effect of replacing Commonwealth heritage protection with state heritage protection like that which applies to heritage property owners elsewhere in Australia. In the Cocos (Keeling) Islands and Christmas Island the property laws of Western Australia have been applied by Commonwealth legislation. This has allowed the creation of certificates of title for separate land parcels that have been lodged with the Western Australian Department of Land Information. Some residents of these Islands have now purchased their houses and hold freehold title to land in Commonwealth areas. It would be appropriate for the heritage legislation of Western Australia to be applied to protect the heritage values of these existing freehold heritage properties, and future freehold heritage places in the territories.
518. To ensure there is no gap in protection for the Commonwealth Heritage places in Christmas Island Territory and the Territory of Cocos (Keeling) Islands, this provision has special commencement provisions. It will commence when the *Heritage of Western Australia Act 1990* starts to be applied in Christmas Island Territory and the Territory of Cocos (Keeling) Islands.

Item 783 – At the end of Division 1 of Part 23

519. This item inserts new section 527E into the Act. This section inserts a definition of “impact”. The purpose of the amendment is to clarify the extent to which impacts which are indirect consequences of actions must be considered or dealt with under the Act. Section 527E applies to all direct and indirect consequences of the taking of an action by a person, which meet the criteria in the section. Subsection 527E(2) only applies in relation to impacts of actions by third parties which are an indirect consequence of the taking of an action by the first person.

Items 784 to 834 – Section 528

520. These items set out the meaning within the Act of the following terms or make consequential amendments to the meanings:

- *accredited authorisation process*
- *accredited management arrangement*
- *accredited management plan*
- *Antarctic*
- *Apia Convention*
- *approved conservation advice*
- *Australian platform*
- *Australian Whale Sanctuary*
- *authorisation process*
- *bilaterally accredited authorisation process*
- *bilaterally accredited management arrangement*
- *bilaterally accredited management plan*
- *Biodiversity Convention*
- *bioregional plan*
- *Bonn Convention*
- *business day*
- *CAMBA*
- *cetacean*
- *Commonwealth Heritage List*
- *Commonwealth Heritage place*
- *control*
- *copy*
- *ecological community*
- *environment*
- *environmental authorisation*
- *executing officer*
- *export*
- *export from the sea*
- *holder*
- *impact*
- *important cetacean habitat area*
- *imported*
- *JAMBA*
- *List of Overseas Places of Historic Significance to Australia*
- *management arrangement*
- *member*
- *migration zone*
- *migratory species*
- *National Heritage List*
- *National Heritage place*
- *Officer of Customs*
- *place*
- *Ramsar Convention*
- *remediation determination*
- *remediation order*
- *seized*

- *specific environmental authorisation*
- *take*
- *trade*
- *World Heritage Convention*

Item 835 – At the end of the Act

Schedule 1 – Provisions relating to detention of suspected foreign offenders

521. This item inserts Schedule 1 into the Act which provides for the detention of suspected non-citizen offenders. Currently authorised officers under the Act are prevented by the *Migration Act 1958* from bringing non-citizens suspected of committing offences against the Act into the migration zone as such persons are not authorised to travel to Australia under the *Migration Act 1958*. This severely limits the Government's ability to enforce the Act in Australia's maritime jurisdiction and non self-governing external Territories and to protect Commonwealth reserves, such as Ashmore Reef National Nature Reserve, and listed species.
522. The powers and duties contained in new Schedule 1 of the Act cover a range of situations including the detention of people suspected of committing an offence, the searching and screening of detainees and the carrying out of identification tests on detainees. The Schedule mirrors the provisions contained in the *Migration Act 1958* for dealing with the detention of unauthorised non-citizens, and the provisions of the *Fisheries Management Act 1991* providing for detention of foreign fishers suspected of offences against that Act.
523. Schedule 1 of the Act will provide for a seamless transition between environment detention under the Act and subsequent detention and repatriation under the *Migration Act 1958*.
524. Items 854 to 869 make related amendments to the enforcement visa provisions of the *Migration Act 1958* that currently apply to suspected illegal foreign fishers so that they apply also to suspected offenders against the EPBC Act. These amendments will enable suspected offenders to be brought to Australia without contravening the *Migration Act 1958*. Together the amendments will improve the enforcement of the Act in Australia's external jurisdiction.
525. Explanatory notes relating to each of the provisions of the new Schedule 1 are set out below:

Part 1: Preliminary

Clause 1: Main objects of this Schedule

526. This clause outlines the three main objects of the new Schedule 1 of the Act.

Clause 2: Definitions

527. This clause provides a list of definitions for the purposes of Schedule 1 to the Act.

Clause 3: Minister may appoint persons to be detention officers

528. Clause 3 allows the Minister to appoint persons to be detention officers. This is a new class of officers under the Act with certain limited powers of detention under Schedule 1 of the Act. It is envisaged that employees and contractors of the Department of Immigration and Multicultural Affairs and the Australian Fisheries Management Authority will be appointed as detention officers in the same way that employees and contractors are currently appointed under the *Migration Act 1958*.

Authorised officers appointed under Part 17 of the Act do not need to be appointed as detention officers as they already have the necessary powers.

Clause 4: Detention officers subject to directions

529. Clause 4 provides that detention officers will be subject to the directions of the Minister in the exercise of their powers and the performance of their duties under new Schedule 1 of the Act.

Clause 5: Detention officer etc. not liable to certain actions

530. Clause 5 provides protection from liability or any kind of court proceedings for detention officers, or people assisting detention officers, for anything done in good faith in the exercise of the powers and functions contained in new Schedule 1 of the Act. Section 498A of the Act makes similar provision for authorised officers appointed under Part 17 of the Act.

Clause 6: The Secretary may approve authorised officers and detention officers

531. Clause 6 provides for the Secretary of the Department to approve authorised officers and/or detention officers who have completed training prescribed by the Regulations to perform functions and exercise powers under a specified provision of Schedule 1. This will ensure control is maintained over the number and type of people who will be approved to use these powers.

Clause 7: Persons who are authorised officers for the purposes of Migration Act 1958 are taken to be approved for this Schedule

532. Clause 7 provides for authorised officers or detention officers to automatically be approved officers if they are authorised to exercise the corresponding powers under the *Migration Act 1958*. This provision will allow officers to be dually authorised to use certain powers under both the Act and the *Migration Act 1958*. Automatic approval under subclause 7(1) is subject to appropriate limitations imposed by subclauses 7(2), (3) and (4).

Part 2: Detaining suspected illegal foreign fishers

Clause 8: Power to detain

533. Clause 8 provides authorised officers appointed under Part 17 of the Act with the power to detain non-citizens who are suspected of committing offences against the Act or the Regulations, for the purposes of deciding whether or not to charge them with committing an offence against the Act or the Regulations, or an offence against clause 6 of the *Crimes Act 1914* relating to such an offence.

Clause 9: Relationship with Part IC of the Crimes Act 1914

534. Clause 9 extends the protective provisions and rights that a protected suspect has under Part IC of the *Crimes Act 1914* to detainees under Schedule 1 to the Act.

Clause 10: Detention officer may detain person already detained by authorised officer

535. Clause 10 allows a detention officer to continue the detention arrangements where a person is initially detained by an authorised officer and presented to the detention officer to continue the detention of that person. This power is limited by subclause 10(2), which will apply, in practice, if a detainee escapes following initial detention. Escape from detention is an offence (see clause 14) but is not in itself an offence for which a person may be detained under subclause 8(1). Accordingly, if the detainee is recaptured, they could not be returned to detention under Schedule 1 of the Act. However, because the detainee's enforcement visa under the *Migration*

Act 1958 will automatically expire as soon as they escape from detention, a recaptured detainee would be detained by a duly authorised officer under the *Migration Act 1958*, as an unauthorised non-citizen.

Clause 11: Detention on behalf of an authorised officer or detention officer

536. Clause 11 provides for detention to continue, in certain circumstances, in the absence of the direct presence of an authorised officer or detention officer. In practice, this clause will allow for a detainee to be moved to a place where they can be cared for better while their offences are being investigated. For example, a detainee may be moved off a vessel, if it is unseaworthy or there are poor weather conditions, to a land based detention facility.

Clause 12: Power to move detainees

537. Clause 12 provides authorised officers and detention officers with the power to move detainees. A detainee may need to be moved to a place where they can be cared for better while their offences are being investigated.

Clause 13: End of detention

538. Clause 13 requires that a detainee must be released from detention in certain circumstances. This clause means that the longest a person can be detained under Schedule 1 of the Act is 168 hours.

Clause 14: Escape from detention

539. Clause 14 makes escape from detention an offence punishable on conviction by imprisonment for up to two years. Escape from detention is not in itself an offence for which a person may be detained under subclause 8(1). Accordingly, if a detainee who has escaped from detention is recaptured, they could not be returned to detention under Schedule 1 of the Act. However, because the detainee's enforcement visa under the *Migration Act 1958* will automatically expire as soon as they escape from detention, a recaptured detainee would be detained by a duly authorised officer under the *Migration Act 1958*, as an unauthorised non-citizen.

Part 3: Searching and screening detainees and screening their visitors

Clause 15: Searches of detainees

540. Clause 15 allows an approved officer to search a detainee without warrant in certain circumstances, subject to sufficient safeguards to ensure that all searches are conducted in an appropriate manner. This power is aimed at ensuring the safety of detainees, and other people, and ensuring that approved officers have a means of determining whether a detainee is concealing evidence of their involvement in the commission of an environment offence. It corresponds closely to section 252 of the *Migration Act 1958*.

Clause 16: Power to conduct a screening procedure

541. Clause 16 provides approved officers with the power to conduct screening procedures without warrant in relation to a detainee, other than those held in State or Territory prisons, in certain circumstances. This power is aimed at ensuring the safety of detainees, and other people. This clause corresponds closely to section 252AA of the *Migration Act 1958*.

Clause 17: Power to conduct a strip search

542. Clause 17 allows approved officers to conduct strip searches on detainees in limited circumstances. This clause corresponds closely to section 252A of the *Migration Act 1958*.

Clause 18: Rules for conducting a strip search

543. Clause 18 sets out rules for the conduct of a strip search of a detainee under clause 17. The rules correspond to section 252B of the *Migration Act 1958* which, in turn, are based on section 3ZI of the *Crimes Act 1914*. The rules ensure strip searches are conducted in a way that will protect the dignity of the detainee as much as possible while still allowing strip searches in very limited circumstances to ensure the safety of the detainee and other people.

Clause 19: Possession and retention of certain things obtained during a screening procedure or strip search

544. Clause 19 provides for the retention of a thing found during a screening procedure (under clause 16) or a strip search (under 17) of a detainee. This clause closely corresponds to section 252C of the *Migration Act 1958* and clause 3ZV of the *Crimes Act 1914*.

Clause 20: Approved officer may apply for a thing to be retained for a further period

545. Clause 20 allows an approved officer to apply to a magistrate for an order under clause 21 extending the period for which they may keep a thing retained under clause 19. It corresponds closely with section 252C of the *Migration Act 1958* and 3ZW of the *Crimes Act 1914*. Clauses 20 and 21 allow evidence to be preserved for use in court proceedings in cases where a delay in court proceedings has occurred while providing for the interests of other parties affected by the retention of the thing to be ascertained.

Clause 21: Magistrate may order that thing be retained

546. Clause 21 provides the circumstances in which a magistrate may make an order allowing an approved officer to retain an item found during a screening procedure or strip search of a detainee for an extended period. This clause closely corresponds to section 252E of the *Migration Act 1958*.

Clause 22: Powers concerning entry to premises where detainee is detained

547. Clause 22 provides certain powers relating to the entry of detainees' visitors to a premise where detainees are detained. This clause closely corresponds to section 252G of the *Migration Act 1958* and is required for the good order and security of detention centres as well as the safety of detainees, staff and other persons located there.

Clause 23: Detainees held in State or Territory prisons or remand centres

548. Clause 23 makes provision for searching detainees held in detention in a prison or remand centre of a State or Territory. This clause closely corresponds with section 252F of the *Migration Act 1958*.

Part 4: Detainees' rights to facilities for obtaining legal advice etc

Clause 24: Detainee may have access to certain advice, facilities etc.

549. Clause 24 requires the person responsible for the detention of a detainee to provide the detainee with access to reasonable facilities for obtaining legal advice or taking legal proceedings in relation to his or her detention. This clause closely corresponds to section 256 of the *Migration Act 1958*.

Part 5: Identifying detainees

Clause 25: Definitions

550. This clause provides definitions for the purposes of Part 5 of Schedule 1 of the Act. The definitions closely correspond to the definitions of these terms in section 5 of the *Migration Act 1958*.

Clause 26: Meaning of personal identifier

551. Clause 26 provides the meaning of a “personal identifier” for the purposes of Part 5 of Schedule 1 (clauses 25 to 58). It closely corresponds to section 5A of the *Migration Act 1958*.

Clause 27: Limiting types of identification tests that approved officers may carry out

552. Clause 27 authorises the Secretary to limit the types of identification tests that may be carried out by an approved officer. This clause closely corresponds to section 5D of the *Migration Act 1958*.

Clause 28: Detainees must provide personal identifiers

553. Clause 28 generally requires that non-citizens in detention must provide personal identifiers to approved officers, subject to certain exceptions. This clause corresponds closely with section 261AA of the *Migration Act 1958*.

Clause 29: Approved officers must require and carry out identification tests

554. Clause 29 requires approved officers to seek personal identifiers and conduct identification tests, subject to restrictions specified in the clause. Subclauses (1) and (2) correspond closely to section 261AB of the *Migration Act 1958*.

Clause 30: Information to be provided before carrying out identification tests

555. Clause 30 requires an approved officer to provide a non-citizen with certain information before an identification test is carried out. This clause closely corresponds with section 261AC of the *Migration Act 1958*.

Clause 31: General rules for carrying out identification tests

556. Clause 31 contains the general rules for carrying out identification tests on a non-citizen in environment detention. This clause closely corresponds to section 261AD of the *Migration Act 1991* which, in turn, is based on section 23XI of the *Crimes Act 1914*. These rules ensure that the dignity and welfare of the non-citizen is respected while identification tests are being carried out

Clause 32: Use of force in carrying out identification tests

557. Clause 32 contains the rules regarding use of reasonable force in carrying out an identification test. This clause closely corresponds to section 261AE of the *Migration Act 1958*.

Clause 33: Identification tests not to be carried out in a cruel, inhuman or degrading manner etc.

558. Clause 33 states that the carrying out of an identification test is not of itself taken to be cruel, inhuman or degrading or to be a failure to treat a person with humanity

and with respect for human dignity, but that nothing in Schedule 1 authorises the carrying out of an 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. Clause 33 closely corresponds with section 261AF of the *Migration Act 1958* and reflects Articles 7 and 10(1) of the *International Covenant on Civil and Political Rights*.

Clause 34: Approved officer may get help to carry out identification tests

559. Clause 34 enables an approved officer to ask another approved officer, an authorised officer or detention officer to help them to carry out an identification test. It also provides that an approved officer, officer or detention officer that has been so requested, is authorised to provide that help. Clause 34 closely corresponds to section 261AG of the *Migration Act 1958*.

Clause 35: Identification tests to be carried out by approved officer of same sex as non-citizen

560. Clause 35 entitles a non-citizen to requests that an identification test be carried out by an approved officer of the same sex as the non-citizen. There is no automatic requirement, as is the case for searches, because identification tests are not considered to be invasive. This clause corresponds closely with section 261AH of the *Migration Act 1958*.

Clause 36: Independent person to be present

561. Clause 36 sets out the circumstances when an independent person (as defined in clause 26) must be present during an identification test. It corresponds closely with section 261AI of the *Migration Act 1958*.

Clause 37: Recording of identification tests

562. Clause 37 provides for approved officers to video record an identification test or, if it is not video recorded, to carry it out in the presence of an independent person. The clause closely corresponds to section 261AJ of the *Migration Act 1958*.

Clause 38: Retesting

563. Clause 38 provides for a non-citizen to undertake the same identification test more than once in certain circumstances. This clause closely corresponds to section 261AK of the *Migration Act 1958*.

Clause 39: Definitions

564. Clause 39 provides definitions for the purposes of clauses 40 to 46. The definitions correspond closely to section 261AKA of the *Migration Act 1958*.

Clause 40: Accessing video recordings

565. Clause 40 makes it an offence for a person who is not authorised under clause 41 to access a video recording of an identification test, unless access is through permitted provision of the videotape. This maximum penalty is imprisonment for two years. This clause closely corresponds to section 261AKB of the *Migration Act 1958*.

Clause 41: Authorising access to video recordings

566. Clause 41 provides for the Secretary to authorise access to video recordings of an identification test carried out on a non-citizen for certain purposes. This clause corresponds closely to section 261AKC of the *Migration Act 1958*.

Clause 42: Providing video recordings

567. Clause 42 makes it an offence to cause the provision of a video recording of an identification test to another person unless it is a “permitted provision”. The maximum penalty is imprisonment for two years. This clause closely corresponds to section 261AKD of the *Migration Act 1958*.

Clause 43: Unauthorised modification of video recordings

568. Clause 43 makes it an offence for a person to intentionally cause an unauthorised modification of a video recording of an identification test that the person knows is unauthorised. The maximum penalty is imprisonment for two years. This clause closely corresponds to section 261AKE of the *Migration Act 1958*.

Clause 44: Unauthorised impairment of video recordings

569. Clause 44 makes it an offence for a person to intentionally cause an unauthorised impairment of the reliability of a video recording, the security of the storage of a video recording, or the operation of a system by which a video recording is stored, where the person knows the impairment is unauthorised. The maximum penalty is imprisonment for two years. This clause closely corresponds to section 261AKF of the *Migration Act 1958*.

Clause 45: Meanings of unauthorised modification and unauthorised impairment etc.

570. Clause 45 defines the circumstances in which modification or impairment of a video recording will be unauthorised for the purposes clauses 43 and 44. This clause closely corresponds to section 261AKG of the *Migration Act 1958*.

Clause 46: Destroying video recordings

571. Clause 46 makes it an offence for a person who has day-to-day responsibility for the system under which video recordings of identification tests are stored to fail to physically destroy the video recording, and all copies of that recording, within 10 years of it being made. The maximum penalty is two years imprisonment. This clause closely corresponds to section 261AKH of the *Migration Act 1958*. This clause safeguards the use of personal information and limits the period in which the information may be stored.

Clause 47: Minors

572. Clause 47 sets out special rules to be applied in carrying out identification tests on minors, as defined in clause 25. This clause closely corresponds to subsections 261AL(1), (5) and (6) of the *Migration Act 1958*.

Clause 48: Incapable persons

573. Clause 48 sets out special rules to be applied in carrying out identification tests on incapable persons, as defined in clause 25. This clause corresponds closely to subsections 261AM(1) and (4) of the *Migration Act 1958*.

Clause 49: Definitions

574. Clause 49 provides definitions for the purposes of clauses 50 to 58. The definitions in this clause closely correspond to section 336A of the *Migration Act 1958*.

Clause 50: Application

575. Clause 50 makes it clear that clause 15.4 of the *Criminal Code* (which relates to extended geographical jurisdiction) applies to all offences against clauses 50 to 58.

This clause corresponds closely with section 336B of the *Migration Act 1958*. The application of clause 15.4 of the *Criminal Code* means that offences can be committed regardless of whether or not the conduct (or the result of the conduct) constituting the alleged offence occurred in Australia. This provision is necessary as some of the offences against clauses 50 to 58 could potentially relate to the disclosure of information to a foreign country and this provision puts beyond doubt that the disclosure of the information will constitute an offence regardless of whether the disclosure was made or received in a foreign location.

Clause 51: Accessing identifying information

576. Clause 51 makes it an offence for a person to access identifying information for an unauthorised purpose, unless the access is through a permitted disclosure. The maximum penalty is two years imprisonment. This clause corresponds closely with section 336C of the *Migration Act 1958*.

Clause 52: Authorising access to identifying information

577. Clause 52 provides for the Secretary to authorise access to identifying information for certain purposes. This clause corresponds closely to section 336D of the *Migration Act 1958*.

Clause 53: Disclosing identifying information

578. Clause 53 makes it an offence to cause the disclosure of identifying information unless that disclosure is a permitted disclosure. The maximum penalty is imprisonment for two years. This clause closely corresponds to section 336E of the *Migration Act 1958*.

Clause 54: Authorising disclosure of identifying information to foreign countries etc.

579. Clause 54 provides for the Secretary to authorise the disclosure of identifying information to foreign countries and organisations for a purpose specified in subclause 26(3). This clause closely corresponds to sections 336F(1) and (2) of the *Migration Act 1958*.

Clause 55: Unauthorised modification of identifying information

580. Clause 55 makes it an offence for a person to intentionally cause an unauthorised modification of identifying information that the person knows is unauthorised. The maximum penalty is imprisonment for two years. This clause closely corresponds to section 336G of the *Migration Act 1958*.

Clause 56: Unauthorised impairment of identifying information

581. Clause 56 makes it an offence for a person to intentionally cause an unauthorised impairment of the reliability of identifying information, the security of the storage of identifying information, or the operation of a system by which identifying information is stored, where the person knows the impairment is unauthorised. The maximum penalty is imprisonment for two years. This clause closely corresponds to section 336H of the *Migration Act 1958*.

Clause 57: Meanings of unauthorised modification and unauthorised impairment etc.

582. Clause 57 defines the circumstances in which modification or impairment of identifying information will be unauthorised for the purposes clauses 55 and 56. This clause closely corresponds to section 336J of the *Migration Act 1958*.

Clause 58: Identifying information may be indefinitely retained

583. Clause 58 provides that identifying information may be indefinitely retained. This clause corresponds closely with paragraph 336L(1)(a) of the *Migration Act 1958* because under Schedule 1 any identifying information will always be about someone who is, or has been, in detention.

Part 6: Disclosure of detainees' personal information

Clause 59: Disclosure of detainees' personal information

584. Clause 59 specifies agencies and organisations to which, and purposes for which, an agency or organisation that has been responsible for the detention of a individual under Schedule 1 may disclose personal information about the detainee (without contravening the *Privacy Act 1988*). The clause places stringent restrictions on the purposes for which personal information may be disclosed to an agency or organisation which has a legitimate reason to know such information in connection with their detention and removal from Australia. The types of information that may be disclosed would include medical, behavioural and identity information.

Part 2 – Amendments of other Acts

Australian Heritage Council Act 2003

Item 836 – Section 3(1) (definition of *Register*)

585. This item repeals the definition of the *Register*. The repeal commences at the end of 5 years starting on the day of commencement of item 550.

Item 837 – After paragraph 5(c)

586. This item clarifies that the Australian Heritage Council has the function, in accordance with section 390P of the *Environment Protection and Biodiversity Conservation Act 1999*, of advising the Minister about the inclusion of places in, and the removal of places from, the new List of Overseas Places of Historic Significance to Australia.

Item 838 – Paragraph 5(f)

587. This item removes the requirement that the Australian Heritage Council keep the Register of the National Estate. The repeal commences at the end of 5 years starting on the day of commencement of item 550.

Item 839 – Addition at the end of Part 4 Section 20A Resolutions without meeting

588. The item clarifies that separate copies of an identical document may be signed by members to indicate agreement with a resolution. 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. This removes significant administration limitations on the Council.

Item 840 – Addition at the end of Part 5

589. This item will stop the addition to, or removal of places from, the Register of the National Estate from the beginning of the 5-year phase-out period. This provision reflects the process of transition of the Register of the National Estate from a statutory list to a non-statutory information source.

Item 841 – Part 5

590. This item repeals Part 5 of the *Australian Heritage Council Act 2003* which deals with the keeping of the Register of the National Estate. The repeal commences at the end of 5 years starting on the day of commencement of item 550.

591. The delayed commencement of this repeal will allow time for the states and territories to amend legislation or processes and to heritage list places which are in the Register of the National Estate.

Items 842 to 845 – Paragraphs 24A(2)(c), (2)(d), (2)(g) and (2)(h)

592. These items remove the reference to the Register of the National Estate. The repeal commences at the end of 5 years starting on the day of commencement of item 550.

Environment and Heritage Legislation Amendment Act (No. 1) 2003

Items 846 and 847 – Subitem 1A(2) of Schedule 3

593. These items amend the heading of subitem 1A(2) of Schedule 3 and remove a requirement that set a time limit for the transfer of existing World Heritage properties into the National Heritage list for their World Heritage values at any time, without the need for further assessment.

Environment Protection (Alligator Rivers Region) Act 1978

Item 848 – Subsection 3(1) (subparagraph (b)(iii) of the definition of prescribed instrument)

594. This item is a technical amendment only to omit “1976 and;” and substitute “1976.” This item is required as a consequence of item 849.

Item 849 – Subsection 3(1) (subparagraph (b)(iv) of the definition of prescribed instrument)

595. This item is required as a consequence of item 592.

Environment Protection (Northern Territory Supreme Court) Act 1978

Item 850 – Section 3 (subparagraph (b)(iii) of the definition of prescribed instrument)

596. This item is a technical amendment only to omit “1976 and;” and substitute “1976.” This item is required as a consequence of item 851.

Item 851 – Section 3 (subparagraph (b)(iv) of the definition of prescribed instrument)

597. The item is required as a consequence of item 592.

Environment Protection (Sea Dumping) Act 1981

Item 852 – Subsection 4(1) (definition of Protocol)

598. This item repeals the definition of “Protocol” and replaces it with a new definition. This amendment is to ensure that the reference in the *Environment Protection (Sea*

Dumping) Act 1981 correctly refers to the “Protocol” as amended and in force for Australia from time to time. This new definition removes the need to amend Schedule 1 on an ongoing basis and will ensure that an accurate version of the Protocol is referenced for users.

Item 853 – Schedule 1

599. This item is a consequence of item 852 which replaces the definition of “Protocol”.

Migration Act 1958

600. These amendments relate to item 835 above which inserts a new Schedule 1 into the *Environment Protection and Biodiversity Conservation Act 1999* that provides for the detention of non-citizens suspected of offences under the Act.

601. The amendments to the *Migration Act 1958* will ensure that a non-citizen detained in relation to suspected offences under the *Environment Protection and Biodiversity Conservation Act 1999* is granted an enforcement visa by operation of the *Migration Act 1958*.

Items 854 to 857 – Subsection 5(1)

602. These items amend subsection 5(1) of the *Migration Act 1958*:

- to add a definition of “environment detention offence”, being an offence against the *Environment Protection and Biodiversity Conservation Act 1999* or the Regulations under the Act, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence.
- to add a definition of “environment officer” being an authorised officer within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*, but does not include an authorised officer because of subsection 397(3) of that Act.
- to add a definition of “foreign aircraft (environment matters)” to mean 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).
- to add a definition of “vessel (environment matters)” to mean a vessel, within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*.

Item 858 – At the end of subsection 43(3)

603. This item inserts paragraph 43(3)(c) into the *Migration Act 1958*.

604. Subsection 43(1) requires that, unless exempted, a visa-holder must usually enter Australia at a port or on a pre-cleared flight.

605. New paragraph 43(3)(c) will provide an exemption from that requirement by allowing an Australian resident entering Australia on a vessel (environmental matters) as a result of the exercise of powers under paragraphs 403(3)(a) or 403(3)(b) of the *Environment Protection and Biodiversity Conservation Act 1999* to bring the vessel to Australia because there were reasonable grounds to suspect the vessel had been used or otherwise involved in the commission of an offence under the *Environment Protection and Biodiversity Conservation Act 1999* or an offence

against section 6 of the *Crimes Act 1914* relating to an offence under the *Environment Protection and Biodiversity Conservation Act 1999*.

Items 859 and 860 – Subsection 43(4)

606. These items amend subsection 43(4) of the *Migration Act 1958* to add definitions of “Commonwealth aircraft” and “Commonwealth ship”. The definitions are relevant to paragraph 43(3)(c) inserted by item 858 and have the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

Items 861 to 865 – Section 164A

607. Section 164A of the *Migration Act 1958* provides definitions for the purposes of Division 4A of the Act which deals with enforcement visas. These items add the following definitions to section 164A:

- “Commonwealth aircraft” which has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.
- “Commonwealth ship” which has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.
- “enforcement visa (environment matters)” which means an enforcement visa that is granted by new section 164BA.
- “enforcement visa (fisheries matters)” which means an enforcement visa that is granted by section 164B.
- “environment detention” which means detention under new *Schedule 1 to the Environment Protection and Biodiversity Conservation Act 1999*.

Item 866 – After section 164B

608. This item inserts new section 164BA of the *Migration Act 1958* that closely reflects existing section 164B which deals with the grant of enforcement visas for non-citizens detained in relation to prescribed offences under the *Fisheries Management Act 1991*. The new section extends the circumstances in which an enforcement visa will be granted by the *Migration Act 1958* to include persons involved in suspected offences under the *Environment Protection and Biodiversity Conservation Act 1999*.

609. Subsection 164BA(1) provides that an enforcement visa is granted to a person on a vessel outside the migration zone where powers are exercised under paragraphs 403(3)(a) or 403(3)(b) of the *Environment Protection and Biodiversity Conservation Act 1999* to bring the vessel to Australia in connection with an offence under the *Environment Protection and Biodiversity Conservation Act 1999* or an offence against section 6 of the *Crimes Act 1914* relating to an offence under the *Environment Protection and Biodiversity Conservation Act 1999*.

610. Subsection 164BA(2) will ensure that a non-citizen in the migration zone who does not already hold an enforcement visa is granted an enforcement visa if they are detained under new Schedule 1 of the Act.

611. Subsections 164BA(3) and (4) provide that an enforcement visa is granted where prescribed powers are exercised by environment officers in prescribed circumstances in relation to non-citizens, vessels (environmental matters) and foreign aircraft (environmental matters) under the *Environment Protection and Biodiversity Conservation Act 1999*. The enforcement visa is granted at the time these powers are exercised.

612. Subsection 164BA(5) clarifies that an enforcement visa is granted by operation of section 164BA.
613. Subsection 164BA(6) provides that despite the effect of new subsections 164BA(1), 164BA(2), 164BA(3) and 164BA(4) a non-citizen is not granted an enforcement if the Minister has made a written declaration under new subsection 164BA(7) that it is undesirable that that person, or class of persons of which the non-citizen is a member, travel to and enter or remain in Australia.
614. New subsection 164BA(7) provides that, for the purposes of new section 164BA, the Minister may make a written declaration that a person is not granted an enforcement visa where it is undesirable that a person, or any person within a class of persons, should travel to and enter Australia or remain in Australia.
615. Subsection 164BA(8) clarifies that the section does not apply to non-citizens who are Australian residents. “Australian resident” is defined in Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*.

Items 867 and 868 – Subsections 164C(1) and (2)

616. These items are of a technical nature only to change references to “enforcement visa” to “enforcement visa (fisheries matter)” in subsections 164C(1) and (2) of the *Migration Act* and are required as a consequence of item 869.

Item 869 – Subsection 164C(3)

617. This item inserts new subsections 164C(3) and 164C(4) of the *Migration Act* which set out when an enforcement visa (environment matters) granted under new section 164BA ceases to have effect, and mirror existing subsections 164C(1) and (2) regarding an enforcement visa (fisheries matter).

Schedule 2 – Application, saving and transitional provisions

Part 1—Preliminary

Item 1 – Definitions

618. This item sets out definitions for transitional purposes.

Part 2—Provisions relating to assessments and approvals

Division 1—Main provisions

Item 2 – Definitions

619. This item sets out definitions for transitional purposes.

Item 3 – Actions referred under Division 1 of Part 7 before the commencement time – general

620. This item contains transitional arrangements in relation to actions referred under Part 7 of the Act. Paragraph (1) applies the provisions of Parts 7, 8 and Division 1 of Part 9 as they existed before amendment by this Bill to all actions which were referred to the Minister before this Bill came into force and which had not received approval under Part 9 of the Act at that time. This provision is subject to the exceptions listed in paragraph (2). These amending items come into force immediately upon commencement of this schedule. This means that the old law in Parts 7, 8 and 9 of the

Act continues to apply to the category of actions identified in paragraph (1), however, certain provisions of the new law, identified in paragraph (2) apply to those actions.

Item 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

621. This item allows the Minister to apply the new law (the EPBC Act as amended by this Bill) to actions which fall within the category of actions identified in paragraph (1) of item 3 by determining in writing that the new law should apply in relation to a particular action. Under Paragraph (2) the Minister may modify the provisions of Part 7 and Division 3 of Part 8 of the Act. The purpose of this amendment is to allow the Minister to transfer actions from the old Chapter 4 referral, assessment, approval scheme to the new scheme where appropriate, and to modify the application of Part 7 or Division 3 of Part 8 of the Act if it is necessary to ensure that timeframes can be met or that a step in the process, such as consultation, that was missed because of the transfer can be carried out.

622. A determination under this item is a legislative instrument, however, such an determination is not subject to disallowance under s.42 of the *Legislative Instruments Act 2003*

Item 5 and 6 – Proposals to authorise actions referred under section 161 before the commencement time—assessment approach decision made, and proposals to authorise actions referred under section 161 before the commencement time—assessment approach decision not made

623. These items apply to actions in relation to which a Commonwealth agency or employee may request advice from the Minister under section 160(1) of the Act. The provision applies the old law (the EPBC Act as amended by this Bill) in Part 8, Subdivision A, Division 4 of Part 11 of the Act and section 170A to all actions referred to the Minister under section 160(1) for which a decision on assessment approach under section 87 (in accordance with section 162) had not been made at the time these amendments commenced. The new law applies to all other actions referred to the Minister under section 160(1).

Item 7 – Actions to which an agreement made under section 167 before the commencement time relates

624. This item applies to agreements between the Commonwealth and State under s.167 which provides for the Commonwealth to undertake an assessment of the impacts of the action on the environment generally. The old law in Part 8, Division 1, Part 10 applies in relation to agreements entered into before the commencement of these amendments. The new law applies to all other agreements.

Item 8 – Saving regulations

625. These are savings provisions. The effect of these provisions is that regulations made under specified provisions of the EPBC Act before amendment by this amending Bill (the ‘old law’) continue to have force as if they were made under the specified provisions of the EPBC Act as amended by this amending Bill (the ‘new law’).

Division 2—Other provisions

Item 9 – Application of amendments made by items 68 etc

626. These are application provisions. The effect of these provisions is that the amendments to the EPBC Act made by the items of this amending Bill which are listed only apply to actions taken after the commencement of this schedule.

Item 10 – Application of amendments made by items 123 etc

627. These are application provisions. The effect of these provisions is that the amendments to the EPBC Act made by the items of this amending Bill which are listed only apply to actions taken after the commencement of this schedule.

Item 11 – Application of amendments made by items 109 and 110

628. These are application provisions. The effect of these provisions is that the amendments to the EPBC Act made by the items of this amending Bill which are listed only apply to a management arrangement or authorisation process that is laid before each House of the Parliament after the commencement of this schedule.

Item 12 – Application of amendments made by items 144 and 145

629. These are application provisions. The effect of these provisions is that the amendments to the EPBC Act made by the items of this amending Bill which are listed only apply to a management arrangement or authorisation process that is laid before each House of the Parliament after the commencement of this schedule.

Item 13 – Saving of accredited management plans

630. These are savings provisions. The effect of these provisions is that a management plan accredited under section 33 of the EPBC act before amendment by this amending Bill (the ‘old law’) continues to have force as an accredited management arrangement under section 33 of the EPBC Act as amended by this amending Bill (the ‘new law’) and a management plan accredited under section 46 of the EPBC act before amendment by this amending Bill (the ‘old law’) continues to have force as a bilaterally accredited management arrangement under section 46 of the EPBC Act as amended by this amending Bill (the ‘new law’).

Part 3—Provisions relating to recovery plans and conservation advice

Item 14 – Definitions

631. This item sets out definitions for transitional purposes.

Item 15 – Listed species or communities for which there are already recovery plans

632. This item is for transitional purposes. A listed threatened species or ecological community which has a recovery plan in force at the commencement of the amended Act need not have approved conservation advice. However should the Minister decide at any time not to have a recovery plan for the threatened species or ecological community, the Minister must then ensure there is approved conservation advice for the threatened species or ecological community.

Item 16 – Listed species or communities for which there are not already recovery plans

633. This item is for transitional purposes and relates to listed threatened species and ecological communities for which there are not already recovery plans in force. None of the items referred to subsection (4) are legislative instruments.

Items 17 and 18 – Species or communities in the Recovery Planning Action Commenced List and Action Not Commenced List

634. These items are for transitional purposes and are as a consequence of transitional item 16.

Part 4—Provisions relating to fisheries

Item 19 – Application of amendment made by item 1

635. The amendment made by item 1 applies to fishing activities engaged in after the item commences (whether the relevant plan of management is in force under the *Fisheries Management Act 1991* before or after that time).

Item 20 – Application of amendments made by items 315 and 316

636. The amendments made by items 315 and 316 apply to agreements made under section 146 of the EPBC Act after the commencement of those items.

Item 21 – Application of amendment made by item 319

637. The amendment made by item 319 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.

Item 22 – Application of amendment made by item 320

638. The amendment made by item 320 applies to agreements made under section 146 of the EPBC Act after the commencement of that item.

Item 23 – Application of amendments made by items 208A etc.

639. The amendments made by items 391, 416, 449 and 466 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. The amendments made by items 391, 416, 449 and 466 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 is done before the commencement of those items.

Item 24 – Application of amendment made by item 487

640. The amendment made by item 487 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

Item 25 – Application of amendments made by items 181 etc

641. The amendment made by items 181, 382, 385, 411, 412, 437, 444, 462 and 467 apply in relation to applications made after the commencement of those items.

Item 26 – Continued application of Subdivision B of Division 4 of Part 11

642. Despite the repeal of Subdivision B of Division 4 of Part 11 of the EPBC Act by item 330 of this Schedule, Subdivision continues to apply in relation to an application for a permit under Division 3 of Part 13 of that Act that was made before the commencement of that item.

Item 27 – Inventories prepared under section 172

643. This item provides that inventories prepared prior to the amendments specified in item 349 commencing will continue to have effect as if they were prepared under the new section 172 of the EPBC Act.

Item 28 – Inventories prepared under section 173

644. This item provides that surveys prepared prior to the amendments specified in item 350 commencing will continue to have effect as if they were prepared under the new section 173 of the EPBC Act.

Item 29 – Application of amendments made by items 417 etc

645. The amendments made by items 417, 418, 423, 424, 425, 426, 428, 434, 439, 441, 811, 812, 816 and 833 of this Schedule apply in relation to actions (however described) taken after the commencement of those items.

Item 30 – Application of amendment made by item 420

646. The amendment made by item 420 of this Schedule applies in relation to actions (however described) taken after the commencement of that item.

Item 31 – Application of amendments made by items 429 and 440

647. The amendment made by item 429 of this Schedule applies in relation to actions taken (however described) after the commencement of that item. The amendment made by item 440 of this Schedule applies in relation to an application for a permit under section 237 of the Act that is made after the commencement of that item.

Item 32 – Application of amendments made by items 430 and 431

648. The amendment made by items 430 and 431 of this Schedule apply in relation to actions taken after the commencement of those items.

Item 33 – Application of amendments made by items 435 and 445

649. The amendment made by item 435 of this Schedule applies in relation to a vessel brought into a port after the commencement of that item. The amendment made by item 445 of this Schedule applies in relation to an application for a permit under section 237 of the Act that is made after the commencement of that item.

Item 34 – Saving regulations

650. Regulations in force before the commencement of item 440 for the purposes of paragraph 238(3)(c) continue in force after commencement as if they were made after commencement. Subitem (1) does not prevent the amendment or repeal of these regulations.

Part 6—Provisions related to wildlife trade

Item 35 – Application of amendments made by items 488 etc

651. 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 this schedule apply to permits granted after the commencement of those items.

Item 36 – Application of amendments made by items 506 etc

652. The amendments made by items 506, 507, 508 and 522 of this schedule apply to assessments started after the commencement of those items.

Part 7—Provisions related to listing processes

Items 37 and 38 – Definitions and Section 191 nominations made before the species commencement

653. These transitional provisions provide for management of nominations which were made prior to the commencement of the amended EPBC Act. Such nominations are subject to the amended EPBC Act upon commencement of the amended EPBC Act with the Minister having the ability to determine that dealings with the nomination under the old EPBC Act may be taken into account.

Item 39 – Section 324E nominations made before heritage commencement

654. This item provides for a place wholly in the Australian jurisdiction that, before commencement, had been nominated under the old section 324E, but was not the subject of a decision by the Minister whether to include it in the National Heritage List. In these instances, the nomination is taken to have been a nomination made in response to the invitation for nominations in the first assessment period under the new Act for the National Heritage List. The new regulations as to manner and form and information to be included in nominations are taken to have been complied with, but a nomination must have complied with regulations for the old section 324E.
655. If the Minister had requested assessment by the Australian Heritage Council before commencement, the Minister is taken to have given the nomination to the Council under the new section 324JA for the first assessment period. The Minister and Council can take into account information obtained in relation to the nomination under the old Act. If the Council had complied with subsection 324G(3A) of the old Act (including the publication of an invitation for comments on a place) before commencement, the Minister may determine that the Council has complied with new section 324JG for the place. Section 324JG requires the Council to invite comments on a finalised priority assessment list. The determination also has the effect that references in the new Act to the notice under subsection 324JG(1) are taken to be references to the notice under the old Act in compliance with old subsection 324G(3A).
656. Places outside the Australian jurisdiction that had been nominated before commencement may be considered by the Minister for the new List of Overseas Places of Historic Significance to Australia.
657. If the Australian Heritage Council had before commencement complied with subsection 324G(4) of the old Act, which specifies consultations to be undertaken if the Council considers a nominated place might have one or more National Heritage values, then the Minister may determine that the Council has complied with new subsection 324JH(5) for the place and that comments received under the old process can be used in the new process. Subsection 324JH(5) is a provision about consultations to be undertaken under the new Act if the Council considers a nominated place might have one or more National Heritage values.
658. If the Australian Heritage Council had given the Minister an assessment before commencement of the new Act under subsection 324G(4) of the old Act, then the Minister may determine that the assessment and any comments given to the Minister were given in accordance with subsection 324JH(1) of the new Act, on the day of the determination.
659. Additionally, the item confirms that the determinations by the Minister under the item are not legislative instruments. This is because they are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 40 – Section 324F emergency listings before commencement

660. This item provides for a place that, before commencement, had been included in the National Heritage List under the old section 324F, but was not the subject of an action by the Minister under subsection 324J(5) of the old Act about its continued inclusion in the National Heritage List. Such a place is taken, for the purposes of the new Act, to have been included in the National Heritage List at the time that it was included in the National Heritage List under the old Act.

661. If the Minister had before commencement complied with the publication and consultation requirements of subsection 324F(5) of the old Act, this is taken to be compliance with the similar requirements of subsection 324JL(3) in the emergency National Heritage listing provisions of the new Act.
662. If the Minister had given the Chair of the Australian Heritage Council a request for assessment under the old subsection 324F(3), the item provides for that request to be taken as a request under subsection 324JM(1) of the new Act, with a completion deadline that is the same as when assessment would have been due under the old Act if it were not repealed. In addition, it empowers the Minister and Council to consider information obtained under the old emergency listing process for the new emergency listing.
663. If the Australian Heritage Council had before commencement complied with subsection 324G(3A) for a place, the Minister is empowered to determine that Council has complied with section 324JN of the new Act, which is about the publication and request for comments on the inclusion of a place by the emergency process in the National Heritage List. The determination also results in references in the new Act to the notice in subsection 324JN(1) being taken as references to the notice published under section 324G(3A) of the old Act. However, new regulations (if any) under paragraph 324JN(3)(b) do not apply to the comments received in response to the notice under the old Act.
664. It is also noted that paragraph 324JO(1)(b) applies the provisions of the new usual Australian Heritage Council assessment process, in section 324JH and other sections that refer to section 324JH, to the new emergency National Heritage listing process. The cut-off date for comments under paragraph 324JH(3)(a), will be the cut-off date (if any) specified in the notice under the old Act.
665. The item provides that if the Australian Heritage Council had before commencement complied with subsection 324G(4) for a place, the Minister is empowered to determine that Council has complied with subsection 324JH(5) of the new Act (as it applies because of section 324JO of the new Act). Subsection 324JH(5) is about consultations when the Council considers that a place might have National Heritage values. The determination also results in comments obtained under the old Act being able to be taken as comments received under paragraph 324JH(5)(c) of the new Act.
666. The item also provides that if the Australian Heritage Council had before commencement given the Minister a written assessment under section 324G of the old Act, the Minister may determine that the assessment and any comments given to the Minister with it under section 324G, have been given in accordance with subsection 324JH(1) of the new Act (as it applies because of section 324JO of the new Act).
667. Additionally, the item confirms that the determinations by the Minister under the item are not legislative instruments. This is because they are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 41 – Changes to section 324F emergency listings not published etc. before commencement

668. This item provides for the situation where the Minister has, under the emergency listing provision in subsection 324J(5) of the old Act, before commencement, removed a place or a value from the National Heritage List or altered the boundary of a place in the National Heritage List, but has not complied with the requirements in old

subsection 324J(7). Subsection 324J(7) requires publication of these decisions and the provision of reasons for them. In these circumstances, this item continues the effect of subsections 324J(7) and 324J(9) despite their repeal, in relation to the removal or alteration. Subsection 324J(9) of the old Act requires publication by the Minister, according to regulations, of a copy or summary of the instrument in the *Gazette* about a removal or alteration.

Item 42 – Section 341E nominations made before commencement

669. This item provides for a place that, before commencement, had been nominated under the old section 324E, but was not the subject of a decision by the Minister whether to include it in the Commonwealth Heritage List. In these instances, the nomination is taken to have been a nomination made in response to the invitation for nominations in the first assessment period under the new Act for the Commonwealth Heritage List. The new regulations as to manner and form and information to be included in nominations are taken to have been complied with, but a nomination must have complied with regulations for the old section 341E.
670. If the Minister had requested assessment by the Australian Heritage Council before commencement, the Minister is taken to have given the nomination to the Council under the new section 341J for the first assessment period. The Minister and Council can take into account information obtained in relation to the nomination under the old Act. If the Council had complied with subsection 341G(3A) of the old Act (including the publication of an invitation for comments on a place) before commencement, the Minister may determine that the Council has complied with new section 341JF for the place. Section 341JF requires the Council to invite comments on a finalised priority assessment list. The determination also has the effect that references in the new Act to the notice under subsection 341JF(1) are taken to be references to the notice under the old Act in compliance with old subsection 341G(3A).
671. If the Australian Heritage Council had before commencement complied with subsection 341G(4) of the old Act, which specifies consultations to be undertaken if the Council considers a nominated place might have one or more Commonwealth Heritage values, then the Minister may determine that the Council has complied with new subsection 341JG(5) for the place and that comments received under the old process can be used in the new process. Subsection 341JG(5) is a provision about consultations to be undertaken under the new Act if the Council considers a nominated place might have one or more National Heritage values.
672. If the Australian Heritage Council had given the Minister an assessment before commencement of the new Act under subsection 341G(4) of the old Act, then the Minister may determine that the assessment and any comments given to the Minister were given in accordance with subsection 341JG(1) of the new Act, on the day of the determination.
673. Additionally, the item confirms that the determinations by the Minister under the item are not legislative instruments. This is because they are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 43 – Section 341F emergency listings before commencement

674. This item provides for a place that, before commencement, had been included in the Commonwealth Heritage List under the old section 341F, but was not the subject of an action by the Minister under subsection 341J(5) of the old Act about its continued

inclusion in the Commonwealth Heritage List. Such a place is taken, for the purposes of the new Act, to have been included in the Commonwealth Heritage List at the time that it was included in the Commonwealth Heritage List under the old Act.

675. If the Minister had before commencement complied with the publication and consultation requirements of subsection 341F(5) of the old Act, this is taken to be compliance with the similar requirements of subsection 341JK(3) in the emergency Commonwealth Heritage listing provisions of the new Act.
676. If the Minister had given the Chair of the Australian Heritage Council a request for assessment under the old subsection 341F(3), the item provides for that request to be taken as a request under subsection 341JL(1) of the new Act, with a completion deadline that is the same as when assessment would have been due under the old Act if it were not repealed. In addition, it empowers the Minister and Council to consider information obtained under the old emergency listing process for the new emergency listing.
677. If the Australian Heritage Council had before commencement complied with subsection 341G(3A) for a place, the Minister is empowered to determine that Council has complied with section 341JM of the new Act, which is about the publication and request for comments on the inclusion of a place by the emergency process in the Commonwealth Heritage List. The determination also results in references in the new Act to the notice in subsection 324JM(1) being taken as references to the notice published under section 341G(3A) of the old Act. However, new regulations (if any) under paragraph 341JM(3)(b) do not apply to the comments received in response to the notice under the old Act.
678. It is also noted that paragraph 341JN(1)(b) applies the provisions of the new usual Australian Heritage Council assessment process, in section 341JG and other sections that refer to section 341JG, to the new emergency Commonwealth Heritage listing process. The cut-off date for comments under paragraph 341JG(3)(a), will be the cut-off date (if any) specified in the notice under the old Act.
679. The item provides that if the Australian Heritage Council had before commencement complied with subsection 341G(4) for a place, the Minister is empowered to determine that Council has complied with subsection 341JG(5) of the new Act (as it applies because of section 341JN of the new Act). Subsection 341JG(5) is about consultations when the Council considers that a place might have Commonwealth Heritage values. The determination also results in comments obtained under the old Act being able to be taken as comments received under paragraph 341JG(5)(c) of the new Act.
680. The item also provides that if the Australian Heritage Council had before commencement given the Minister a written assessment under section 341G of the old Act, the Minister may determine that the assessment and any comments given to the Minister with it under section 341G, have been given in accordance with subsection 341JG(1) of the new Act (as it applies because of section 341JN of the new Act).
681. Additionally, the item confirms that the determinations by the Minister under the item are not legislative instruments. This is because they are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 44 – Changes to section 341F emergency listings not published etc. before commencement

682. This item provides for the situation where the Minister has, under the emergency listing provision in subsection 341J(5) of the old Act, before commencement, removed a place or a value from the Commonwealth Heritage List or altered the boundary of a place in the Commonwealth Heritage List, but has not complied with the requirements in old subsection 341J(7). Subsection 341J(7) requires publication of these decisions and the provision of reasons for them. In these circumstances, this item continues the effect of subsections 341J(7) and 341J(9) despite their repeal, in relation to the removal or alteration. Subsection 341J(9) of the old Act requires publication by the Minister, according to regulations, of a copy or summary of the instrument in the *Gazette* about a removal or alteration.

Item 45 – Plans in force under subsection 324S(1) before the heritage commencement time

683. This item provides for the continued effect of a plan made and in force before commencement under repealed subsection 324S(1) of the old Act, as if it had been made under the new Act. Subsection 324S(1) required the preparation of plans for National Heritage places wholly in Commonwealth areas, and has been replaced by a new subsection about management plans for such places. An obligation on the Minister to make a plan under the repealed subsection 324S(1) also continues after commencement as if it were an obligation under the new subsection 324S(1).

Part 8—Provisions relating to Commonwealth reserves

Item 46 – Application of amendment to item 599

684. This item makes clear that item 599 applies to management plans approved by the Minister under section 370 on or after the commencement of that item.

Item 47 – Application of amendment to item 600

685. This item makes clear that item 600 (section 373) applies to management plans made on or after the commencement of that item.

Item 48 – Application of amendment to item 601

686. This item clarifies that item 601 (subsection 379(1)) does not apply to appointments of Board of Management members made before the item commences.

Item 49 – Application of amendment made by item 603

687. This item clarifies that item 603 (subsection 382(1)) applies to Board of Management members appointed before and after the item commences.

Part 9—Provisions relating to compliance and enforcement

Item 50 – Transitional provision – things seized or warrants issued

688. This item is for transitional purposes. Any item that amends or repeals a provision of Part 17 of the EPBC Act does not apply in relation to a thing seized, or warrant issued, before the commencement of the amended Act.

Item 51 – Application of amendment made by item 739

689. This item is for transitional purposes. The amendment made by item 739 applies to things forfeited, whether before or after the commencement of the amended Act.

Item 52 – Saving of approvals

690. This item is for transitional purposes. Any approvals in force under section 453 of the Act immediately before the commencement of the amended Act will be considered to relate to both organisms and specimens.

Item 53 – Application of amendment made by item 763

691. This item is for transitional purposes. The amendment made by item 763 applies to applications to the Federal Court for an injunction that are made after the commencement of the amended Act.

Item 54 – Amendments of offence etc. provisions do not apply to actions and omissions that occurred before commencement of amending items

692. This item is for transitional purposes. Any item that amends, repeals, or otherwise affects the scope of a provision of the Act that is an offence provision or a civil penalty provision, or inserts an offence or civil penalty provision into the Act, does not apply to an act or omission that occurred before the commencement of the amended Act.

Part 10—Other provisions

Item 55 – Application of amendments made by items 168 and 169

693. This item is for transitional purposes and makes it clear that removing the 5 year life for bilateral agreements does not apply to bilateral agreements entered into before the items 168 and 169 commence.

Item 56 – Application of amendments made by items 386 etc.

694. The purpose of this item is to ensure that the amendments made by the items referred to in this amendment do not apply in relation to any decision made under the Act before the commencement of those items. As such, decisions made personally by the Minister prior to the commencement of these amendments are still subject to review by the Administrative Appeals Tribunal.

Item 57 – Application of amendments made by items 788 etc

695. The purpose of this item is to ensure that the amendments made by the items referred to in this amendment do not affect the validity of any decision made or action taken under the Act, or the regulations, before the commencement of those items. That is, changes made to the definitions of these Conventions and Agreements do not invalidate any decision or action taken prior to the commencement of these amendments.

Item 58 – Regulations may deal with transitional, saving or application matters

696. This item makes it clear that regulations dealing with matters of a transitional, saving or application nature made under this item may take effect from a date before the regulations are registered.