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The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Environment and Heritage Legislation Amendment Bill (No. 1) 2006

No. , 2006

(Environment and Heritage)

A Bill for an Act to amend the *Environment Protection and Biodiversity Conservation Act 1999*, and for other purposes

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2	Protection and Biodiversity Conservation Act 1999, and for other purposes
4	The Parliament of Australia enacts:
5	1 Short title
6 7	This Act may be cited as the <i>Environment and Heritage</i> Legislation Amendment Act (No. 1) 2006.
8	2 Commencement
9	(1) Each provision of this Act specified in column 1 of the table
10	commences, or is taken to have commenced, in accordance with
11 12	column 2 of the table. Any other statement in column 2 has effect according to its terms.
	according to its terms.
13	

A Bill for an Act to amend the Environment

Commencement information			
Column 1	Column 2	Column 3	
Provision(s)	Commencement	Date/Details	
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.		
2. Schedule 1, items 1 to 606	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.		
3. Schedule 1, item 607	At the end of the period of 5 years beginning on the day on which item 550 of Schedule 1 commences.		
4. Schedule 1, items 608 to 780	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.		
5. Schedule 1, item 781	Immediately after the Heritage of Western Australia Act 1990 of Western Australia starts to apply in the Territory of Christmas Island. The Minister must announce by notice in the Gazette the day on which the Heritage of Western Australia Act 1990 of Western Australia starts to apply in the Territory of Christmas Island. The notice is not a legislative instrument.		
6. Schedule 1, item 782	Immediately after the Heritage of Western Australia Act 1990 of Western Australia starts to apply in the Territory of Cocos (Keeling) Islands. The Minister must announce by notice in the Gazette the day on which the Heritage of Western Australia Act 1990 of Western		

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	Australia starts to apply in the Territory of Cocos (Keeling) Islands. The notice is not a legislative instrument.	
7. Schedule 1,	A day or days to be fixed by Proclamation.	
items 783 to 807	However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
8. Schedule 1, item 808	At the end of the period of 5 years beginning on the day on which item 550 of Schedule 1 commences.	
9. Schedule 1,	A day or days to be fixed by Proclamation.	
items 809 to 835	However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
10. Schedule 1 item 836	At the end of the period of 5 years beginning on the day on which item 550 of Schedule 1 commences.	
11. Schedule 1,	A day to be fixed by Proclamation.	
item 837	However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
12. Schedule 1 item 838	At the end of the period of 5 years beginning on the day on which item 550 of Schedule 1 commences.	
13. Schedule 1,	A day or days to be fixed by Proclamation.	
items 839 and 840	However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
14. Schedule 1,	At the end of the period of 5 years beginning	

Column 1	Column 2	Column 3	
Provision(s)	Commencement	Date/Details	
items 841 to 845	on the day on which item 550 of Schedule 1 commences.		
15. Schedule 1, items 846 to 869	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.		
16. Schedule 2	The day on which this Act receives the Royal Assent.		
Note:	This table relates only to the provisions of this A passed by both Houses of the Parliament and ass expanded to deal with provisions inserted in this	sented to. It will not	
part of	nn 3 of the table contains additional information in this Act. Information in this column may be in any published version of this Act.		

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

Schedule 1—Amendment of Acts
Part 1—Amendment of the Environment Protection and Biodiversity Conservation Act 1999
1 After section 5
Insert:
6 Extended application of Act to match extended management of fisheries under the Fisheries Management Act 1991
(1) This section applies if:
(a) under the Fisheries Management Act 1991, a plan of
management in force under that Act applies to particular
fishing activities in a particular area of water; and
(b) the area of water is not within, or is not wholly within:
(i) the Australian jurisdiction; or
(ii) a Commonwealth area; or
(iii) a Commonwealth marine area; and
(c) the area of water is not:
(i) an area of water, rights in respect of which have been
vested in a State by section 4 of the <i>Coastal Waters</i> (State Title) Act 1980 or in the Northern Territory by
section 4 of the Coastal Waters (Northern Territory
<i>Title) Act 1980</i> ; or
(ii) an area of water within the limits of a State or the
Northern Territory.
(2) If, apart from this subsection, a provision of this Act would, or
would not, apply in relation to the fishing activities (or in relation
to fish or other things taken in the course of the activities) because
the area of water mentioned in subsection (1) is not within, or is
not wholly within:
(a) the Australian jurisdiction; or
(b) a Commonwealth area; or
(c) a Commonwealth marine area;

1	that provision has effect in relation to the fishing activities (and in
2	relation to fish or other things taken in the course of the activities) as if the area of water were wholly within:
4	(d) the Australian jurisdiction; or
	(e) a Commonwealth area; or
5	• • • • • • • • • • • • • • • • • • • •
6	(f) a Commonwealth marine area;
7	as the case requires.
8	Note: This section is subject to subsection 5(3).
9	Example 1: Fishing activities in an area of water that is not a Commonwealth area
10	generally do not contravene Part 13. However, because of this
11 12	subsection, that Part applies to fishing activities to which this section applies as if the area of water were within a Commonwealth area. The
13	fishing activities may therefore contravene that Part.
14	Example 2: If fish taken in the course of fishing activities in an area of water that
15	is not within the Australian jurisdiction are brought into Australia, this
16 17	generally constitutes an import (being an import by way of introduction from the sea) of the fish into Australia, which may
18	contravene Part 13A. However, because of this subsection, that Part
19	applies to the fish as if the area of water were within the Australian
20	jurisdiction. The bringing of the fish into Australia therefore does not
21	constitute an import for the purposes of that Part.
22	Example 3: This section allows a plan of management to be accredited under
23 24	Part 13 in respect of the entire area of water to which the plan relates (even if some of the area is outside the Australian jurisdiction, a
25	Commonwealth area or a Commonwealth marine area).
26	(3) In this section:
27	fishing has the same meaning as in the Fisheries Management Act
28	1991.
29	2 Section 7
30	After "Criminal Code", insert "(except Part 2.5)".
31	3 At the end of section 7
32	Add:
33 34	Note 1: Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.
35 36 37	Note 2: Part 2.5 of the <i>Criminal Code</i> (which deals with corporate criminal responsibility) is excluded from applying to offences against this Act by subsection 498B(9).
20	/ Paragraph 15Λ/1\/h\
38	4 Paragraph 15A(1)(b)

1	Repeal the paragraph, substitute:	
2	(b) the action results or will result in a significant impact on the	e
3	world heritage values of a property; and	
4	(c) the property is a declared World Heritage property.	
5	5 After subsection 15A(1)	
6	Insert:	
7	(1A) Strict liability applies to paragraph (1)(c).	
8	Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .	
9	6 Paragraph 15A(2)(b)	
10	Repeal the paragraph, substitute:	
11	(b) the action is likely to have a significant impact on the world	t
12	heritage values of a property; and	
13	(c) the property is a declared World Heritage property.	
14	7 After subsection 15A(2)	
15	Insert:	
16	(2A) Strict liability applies to paragraph (2)(c).	
17	Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .	
18	8 At the end of subsection 15A(3)	
19	Add:	
20 21	Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.	
22	9 Subsection 15B(7)	
23	Repeal the subsection.	
24	10 Subsection 15B(8)	
25	Omit "and (7)".	
26	11 Paragraph 15C(1)(b)	
27	Repeal the paragraph, substitute:	
28	(b) the action results or will result in a significant impact on the	e
29	heritage values of a place; and	

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

1 2		(c) the heritage values are National Heritage values of the place;and
3		(d) the place is a National Heritage place.
4	12	After subsection 15C(1)
5		Insert:
6		(1A) Strict liability applies to paragraphs (1)(c) and (d).
7		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
8	13	Paragraphs 15C(2)(b) and (c)
9		Repeal the paragraphs, substitute:
10 11		(b) the action is likely to have a significant impact on the heritage values of a place; and
12 13		(c) the heritage values are National Heritage values of the place;and
14		(d) the place is a National Heritage place.
15	14	After subsection 15C(2)
16		Insert:
17		(2A) Strict liability applies to paragraphs (2)(c) and (d).
18		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
19	15	Paragraph 15C(3)(c)
20		Repeal the paragraph, substitute:
21		(c) the action results or will result in a significant impact on the
22		heritage values of a place; and
23 24		(d) the heritage values are National Heritage values of the place; and
25		(e) the place is a National Heritage place.
26	16	After subsection 15C(3)
27		Insert:
28		(3A) Strict liability applies to paragraphs (3)(d) and (e).
29		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
30	17	Paragraphs 15C(4)(c) and (d)

1		Repeal the paragraphs, substitute:
2		(c) the action is likely to have a significant impact on the
3		heritage values of a place; and
4 5		(d) the heritage values are National Heritage values of the place; and
6		(e) the place is a National Heritage place.
7	18	After subsection 15C(4)
8		Insert:
9		(4A) Strict liability applies to paragraphs (4)(d) and (e).
10		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
11	19	Paragraph 15C(5)(c)
12		Repeal the paragraph, substitute:
13		(c) the action results or will result in a significant impact on the
14		heritage values of a place; and
15		(d) the heritage values are National Heritage values of the place;
16		and
17		(e) the place is a National Heritage place.
18	20	After subsection 15C(5)
19		Insert:
20		(5A) Strict liability applies to paragraphs (5)(d) and (e).
21		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
22	21	Paragraphs 15C(6)(c) and (d)
23		Repeal the paragraphs, substitute:
24		(c) the action is likely to have a significant impact on the
25		heritage values of a place; and
26		(d) the heritage values are National Heritage values of the place;
27		and
28		(e) the place is a National Heritage place.
29	22	After subsection 15C(6)
30		Insert:
31		(6A) Strict liability applies to paragraphs (6)(d) and (e).

	Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
23	Paragraph 15C(7)(b)
	Repeal the paragraph, substitute:
	(b) the action results or will result in a significant impact on the heritage values, to the extent that they are indigenous heritage values, of a place; and
	(c) the heritage values are National Heritage values of the place; and
	(d) the place is a National Heritage place.
24	After subsection 15C(7)
	Insert:
	(7A) Strict liability applies to paragraphs (7)(c) and (d).
	Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
25	Paragraphs 15C(8)(b) and (c)
	Repeal the paragraphs, substitute:
	(b) the action is likely to have a significant impact on the heritage values, to the extent that they are indigenous heritage values, of a place; and
	(c) the heritage values are National Heritage values of the place; and
	(d) the place is a National Heritage place.
26	After subsection 15C(8)
	Insert:
	(8A) Strict liability applies to paragraphs (8)(c) and (d).
	Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
27	Paragraph 15C(9)(b)
	Repeal the paragraph, substitute:
	(b) the action results or will result in a significant impact on the
	heritage values of a place; and
	(ba) the heritage values are National Heritage values of the place;
	and

1	28	After subsection 15C(9)
2		Insert:
3		(9A) Strict liability applies to paragraphs (9)(ba), (bb) and (c).
4		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
5	29	Paragraph 15C(10)(b)
6		Repeal the paragraph, substitute:
7 8		(b) the action is likely to have a significant impact on the heritage values of a place; and
9 10		(ba) the heritage values are National Heritage values of the place;
11		(bb) the place is a National Heritage place; and
12	30	Paragraph 15C(10)(c)
13		Omit "Convention; and", substitute "Convention.".
14	31	Paragraph 15C(10)(d)
15		Repeal the paragraph.
16	32	After subsection 15C(10)
17		Insert:
18		(10A) Strict liability applies to paragraphs (10)(ba), (bb) and (c).
19		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
20	33	Subsections 15C(11) and (12)
21		Repeal the subsections.
22	34	Subsection 15C(13)
23		Omit "(12)", substitute "(10)".
24	35	At the end of subsection 15C(13)
25		Add:
26 27		Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.
28	36	Subsection 15C(15)
29		Repeal the subsection.

Omit "(12)", substitute "(10)".	
38 Paragraph 17B(1)(b) Repeal the paragraph, substitute: (b) the action results or will result in a significant impaecological character of a wetland; and (c) the wetland is a declared Ramsar wetland.	ct on the
39 After subsection 17B(1) Insert:	
(1A) Strict liability applies to paragraph (1)(c). Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .	
 40 Paragraph 17B(2)(b) Repeal the paragraph, substitute: (b) the action is likely to have a significant impact on the ecological character of a wetland; and (c) the wetland is a declared Ramsar wetland. 	ne
41 After subsection 17B(2) Insert: (2A) Strict liability applies to paragraph (2)(c).	
Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> . 42 At the end of subsection 17B(3)	
Add: Note 3: If a person takes an action on land that contravenes this selandholder may be guilty of an offence against section 496	
43 Paragraph 18A(1)(b)	
Repeal the paragraph, substitute: (b) the action results or will result in a significant impa- (i) a species; or (ii) an ecological community; and (c) the species is a listed threatened species, or the com- a listed threatened ecological community.	

1	44	After subsection 18A(1)
2		Insert:
3		(1A) Strict liability applies to paragraph (1)(c).
4		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
5	45	Paragraph 18A(2)(b)
6		Repeal the paragraph, substitute:
7		(b) the action is likely to have a significant impact on:
8		(i) a species; or
9		(ii) an ecological community; and
10 11		(c) the species is a listed threatened species, or the community is a listed threatened ecological community.
12	46	After subsection 18A(2)
13		Insert:
14		(2A) Strict liability applies to paragraph (2)(c).
15		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
16	47	At the end of subsection 18A(3)
17		Add:
18 19		Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.
20	48	At the end of section 19
21		Add:
22 23		(4) A subsection of section 18 or 18A does not apply to an action, to the extent that it is covered by subsection 517A(7).
24	49	Paragraph 20A(1)(b)
25		Repeal the paragraph, substitute:
26		(b) the action results or will result in a significant impact on a
27		species; and
28		(c) the species is a listed migratory species.
29	50	After subsection 20A(1)
30		Insert:

1	(1A) Strict liability applies to paragraph (1)(c).
2	Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
3 4 5	51 Paragraph 20A(2)(b) Repeal the paragraph, substitute: (b) the action is likely to have a significant impact on a species;
6 7	and (c) the species is a listed migratory species.
8	52 After subsection 20A(2)
9	Insert:
0	(2A) Strict liability applies to paragraph (2)(c).
1	Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
2	53 At the end of subsection 20A(3) Add:
14	Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.
.6	54 At the end of Subdivision D of Division 1 of Part 3
.7	Add:
8	20B Certain actions relating to listed migratory species not prohibited
20 21	A subsection of section 20 or 20A does not apply to an action, to the extent that it is covered by subsection 517A(7).
22	55 At the end of subsection 22A(7) Add:
24 25	Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.
26	56 At the end of section 24
27	Add:
28 29	; (g) any other area of sea or seabed that is included in a Commonwealth reserve.

1	57	After subsection 24A(1) Insert:
2		
3		(1A) Strict liability applies to paragraph (1)(b).
4		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
5	58	Paragraph 24A(2)(c)
6		Omit "and the person is reckless as to that fact".
7	59	After subsection 24A(2) Insert:
9		(2A) Strict liability applies to paragraph (2)(b).
10		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
11	60	Paragraph 24A(3)(c)
12		Repeal the paragraph, substitute:
13 14		(c) the action results or will result in a significant impact on the environment in an area; and
15		(d) the area is a Commonwealth marine area.
16	61	After subsection 24A(3)
17		Insert:
18		(3A) Strict liability applies to paragraphs (3)(b) and (d).
19		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
20	62	Paragraph 24A(4)(c)
21		Repeal the paragraph, substitute:
22		(c) the action is likely to have a significant impact on the
23 24		environment in an area; and (d) the area is a Commonwealth marine area.
24		
25	63	After subsection 24A(4)
26		Insert:
27		(4A) Strict liability applies to paragraphs (4)(b) and (d).
28		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .

1	64	After subsec	tion 24A(5)
2		Insert:	
3		(5A) Strict lia	ability applies to paragraph (5)(b).
4		Note:	For strict liability, see section 6.1 of the Criminal Code.
5	65	Paragraph 24	4A(6)(c)
6		•	ne person is reckless as to that fact".
7	66	After subsec	tion 24A(6)
8		Insert:	
9		(6A) Strict lia	ability applies to paragraph (6)(b).
0		Note:	For strict liability, see section 6.1 of the Criminal Code.
1	67	At the end of	subsection 24A(7)
12		Add:	
13		Note 3:	If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.
15	68	After Subdiv	ision H of Division 1 of Part 3
6		Insert:	
17	Su	bdivision HA-	Limitation on liability for actions of third
18	2	parties	•
19	25	AA Limitation	on liability for actions of third parties
20 21			sion mentioned in subsection (2) or (3) does not apply to an the <i>primary action</i>) if:
22		(a) a j	person (the <i>primary person</i>) takes the action; and
23 24 25		se	a consequence of the primary action, another person (the <i>condary person</i>) takes another action (the <i>secondary tion</i>); and
26 27		(c) the	e secondary action is not taken at the direction or request of e primary person; and
28 29			e significant impact referred to in the provision is a ensequence of the secondary action.

1	Defence to offences
2	(2) For the purposes of subsection (1), the following provisions do not
3	apply to the primary action:
4	(a) subsections 15A(1) and (2);
5	(b) subsections 15C(1) to (10);
6	(c) subsections 17B(1) and (2);
7	(d) subsections 18A(1) and (2);
8	(e) subsections 20A(1) and (2);
9	(f) subsections 22A(1) to (6);
10	(g) subsections 24A(1) to (6).
11 12	Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
13	Exception to civil penalties
14	(3) For the purposes of subsection (1), the following provisions do not
15	apply to the primary action:
16	(a) subsection 12(1);
17	(b) subsections 15B(1) to (5) and (7);
18	(c) subsection 16(1);
19	(d) subsections 18(1) to (6);
20	(e) subsection 20(1);
21	(f) subsections 21(1) to (3);
22	(g) subsections 23(1) to (3);
23	(h) subsection 25(1).
24	69 Subsection 25B(3)
25	After "475", insert ", 480A, 480K".
26	70 Subsection 25D(1)
27	After "475", insert ", 480A, 480K".
28	71 After subsection 27A(1)
29	Insert:
30	(1A) Strict liability applies to paragraph (1)(b).
31	Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .

1	72	Paragraph 27A(2)(c)
2		Omit "and the person is reckless as to that fact".
3	73	After subsection 27A(2)
4		Insert:
5		(2A) Strict liability applies to paragraph (2)(b).
6		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
7	74	Paragraph 27A(3)(c)
8		Repeal the paragraph, substitute:
9		(c) the action results or will result in a significant impact on the
10		environment in an area; and
11		(d) the area is Commonwealth land.
12	75	After subsection 27A(3)
13		Insert:
14		(3A) Strict liability applies to paragraphs (3)(b) and (d).
15		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
16	76	Paragraph 27A(4)(c)
17		Repeal the paragraph, substitute:
18 19		(c) the action is likely to have a significant impact on the environment in an area; and
20		(d) the area is Commonwealth land.
	77	
21	"	After subsection 27A(4)
22		Insert:
23		(4A) Strict liability applies to paragraphs (4)(b) and (d).
24		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
25	78	At the end of subsection 27A(5)
26		Add:
27 28		Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.
29	79	Paragraph 27C(1)(c)
		- · · · · · · · · · · · · · · · · · · ·

1		Repeal the paragraph, substitute:
2 3		(c) the action results or will result in a significant impact on the environment in a place; and
4		(ca) the place is a Commonwealth Heritage place; and
5	80	After subsection 27C(1)
6		Insert:
7		(1A) Strict liability applies to paragraph (1)(ca).
8		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
9	81	Paragraphs 27C(2)(c) and (d)
10		Repeal the paragraphs, substitute:
11		(c) the action is likely to have a significant impact on the
12		environment in a place; and
13		(d) the place is a Commonwealth Heritage place; and
14	82	After subsection 27C(2)
15		Insert:
16		(2A) Strict liability applies to paragraph (2)(d).
17		Note: For strict liability, see section 6.1 of the <i>Criminal Code</i> .
18	83	Subsection 28(5)
19		Repeal the subsection, substitute:
20		(5) The Minister may make a declaration under subsection (4) relating
21		to a Commonwealth agency's actions only if he or she is satisfied
22		that:
23		(a) in taking the actions to which the declaration relates, the
24		agency must comply with the law of a State or Territory
25 26		(including a law of a State that is applied to a Commonwealth place by virtue of the <i>Commonwealth Places (Application of</i>
27		Laws) Act 1970), that has either or both of the following
28		objects (whether express or implied):
29		(i) to protect the environment;
30		(ii) to promote the conservation and ecologically
31		sustainable use of natural resources; and

1 2 3	(b) the impacts that the actions have, will have or are likely to have on the environment, are adequately addressed under the State or Territory law.
4	84 At the end of Division 2 of Part 3
5	Add:
6	Subdivision D—Limitation on liability for actions of third
7	parties
8	28AB Limitation on liability for actions of third parties
9 10	(1) A provision mentioned in subsection (2) or (3) does not apply to an action (the <i>primary action</i>) if:
11	(a) a person (the <i>primary person</i>) takes the action; and
12	(b) as a consequence of the primary action, another person (the
13	secondary person) takes another action (the secondary
14	action); and
15 16	(c) the secondary action is not taken at the direction or request of the primary person; and
17	(d) the significant impact referred to in the provision is a
18	consequence of the secondary action.
19	Defence to offences
20	(2) For the purposes of subsection (1), the following provisions do not
21	apply to the primary action:
22	(a) subsections 27A(1) to (4);
23	(b) subsections 27C(1) and (2).
24 25	Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
26	Exception to civil penalties
27	(3) For the purposes of subsection (1), the following provisions do not
28	apply to the primary action:
29	(a) subsections 26(1) and (2);
30	(b) subsection 27B(1);
31	(c) subsection 28(1).
32	85 Division 3 of Part 3

1		Repeal the Division.
2	86	Paragraph 29(1)(b)
3		Omit "management plan that is a bilaterally accredited management
4		plan", substitute "management arrangement or authorisation process
5		that is a bilaterally accredited management arrangement or a bilaterally
6		accredited authorisation process".
7	87	Paragraph 29(1)(d)
8		Repeal the paragraph, substitute:
9		(d) either of the following applies:
10		(i) in the case of a bilaterally accredited management
11		arrangement—the management arrangement is in force
12 13		under a law of the State or Territory identified in or under the bilateral agreement;
14		(ii) in the case of a bilaterally accredited authorisation
15		process—the authorisation process is set out in a law of
16		the State or Territory, and the law and the authorisation
17		process are identified in or under the bilateral
18		agreement; and
19	88	Paragraph 29(1)(e)
20		Omit "management plan", substitute "management arrangement or
21		bilaterally accredited authorisation process".
22	89	Paragraph 31(c)
23		Omit "management plan", substitute "management arrangement or a
24		bilaterally accredited authorisation process".
25	90	Paragraph 31(f)
26		Repeal the paragraph, substitute:
27		(f) either of the following applies:
28		(i) in the case of a bilaterally accredited management
29		arrangement—the management arrangement is in force
30		under a law of the State or self-governing Territory
31		identified in or under the bilateral agreement;
32		(ii) in the case of a bilaterally accredited authorisation
33		process—the authorisation process is set out in a law of
34		the State or self-governing Territory, and the law and

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1 2		the authorisation process are identified in or under the bilateral agreement; and
3	91	Paragraph 31(g)
4 5		Omit "management plan", substitute "management arrangement or bilaterally accredited authorisation process".
6	92	Division 2 of Part 4 (heading)
7		Repeal the heading, substitute:
8 9 10	Di	vision 2—Actions covered by Ministerial declarations and accredited management arrangements or accredited authorisation processes
1	93	Paragraph 32(a)
12		Omit "management plan", substitute "management arrangement or an accredited authorisation process".
4	94	Paragraph 32(c)
15		Repeal the paragraph, substitute:
16		(c) one of the following applies:
17		(i) in the case of an accredited management arrangement—
8		the management arrangement is in operation under a
19 20		law of the Commonwealth identified in or under the declaration;
21		(ii) in the case of an accredited authorisation process—the
22		authorisation process is set out in a law of the
23		Commonwealth, and the law and the authorisation
24		process are identified in or under the declaration; and
25	95	Paragraph 32(d)
26		Omit "management plan", substitute "management arrangement or
27		accredited authorisation process".
28	96	Subsection 33(1)
29		Omit "a management plan that is an accredited management plan",
30		substitute "a management arrangement or authorisation process that is
31		an accredited management arrangement or an accredited authorisation
32		process".

1	97 S	ubsection 33(2)
2		Repeal the subsection, substitute:
3		What is an accredited management arrangement?
4		(2) A management arrangement is an accredited management
5		arrangement for the purposes of a declaration that certain actions
6 7		do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if:
8		(a) the management arrangement is in operation under a law of
9		the Commonwealth identified in or under the declaration; and
10		(b) the management arrangement has been accredited in writing
11		by the Minister in accordance with this section for the
12		purposes of the declaration.
13		What is an accredited authorisation process?
14		(2A) An authorisation process is an accredited authorisation process for
15		the purposes of a declaration that certain actions do not require
16		approval under Part 9 for the purposes of a specified provision of
17		Part 3 if and only if:
18		(a) the authorisation process is set out in a law of the
19 20		Commonwealth, and the law and the authorisation process are identified in or under the declaration; and
21		(b) the authorisation process has been accredited in writing by
22		the Minister in accordance with this section for the purposes
23		of the declaration.
24	98 S	ubsection 33(3)
25		Omit ", the Minister may accredit by written instrument a management
26		plan", substitute "or (2A), the Minister may accredit by written
27		instrument a management arrangement or authorisation process".
28 29	Note:	The heading to subsection 33(3) is altered by omitting "management plan" and substituting "management arrangement or authorisation process".
30	99 P	aragraph 33(3)(a)
31		Repeal the paragraph, substitute:
32		(a) the management arrangement or authorisation process and
33		the law under which it is in operation, or in which it is set
34		out, meet the criteria prescribed by the regulations; and

1	100	Paragraph 33(3)(b)
2		Omit "plan", substitute "management arrangement or authorisation
3		process".
4	101	Paragraph 33(3)(c)
5		Omit "management plan", substitute "management arrangement or
6		authorisation process".
7	102	Subsection 33(3)
8 9		Omit "management plan" (last occurring), substitute "management arrangement or authorisation process".
10	103	Subsection 33(3) (note)
1		Omit "plan", substitute "management arrangement or authorisation
12		process".
13	104	Subsection 33(4)
14		Repeal the subsection, substitute:
15		Tabling of management arrangement or authorisation process before accreditation
17 18		(4) The Minister must cause to be laid before each House of the Parliament:
19		(a) a copy of:
20 21		(i) in the case of a management arrangement—the management arrangement; or
22		(ii) in the case of an authorisation process—the relevant
23		part of the law in which the authorisation process is set
24		out;
25		that the Minister is considering accrediting for the purposes
26		of subsection (2) or (2A); and
27		(b) a notice that the Minister proposes to accredit the
28 29		management arrangement or authorisation process for the purposes of a declaration under this section.
80	105	Subsection 33(5)
31		Omit "management plan", substitute "management arrangement or
32		authorisation process".

1	106	Subsection 33(5)
2		After "(2)", insert "or (2A)".
3	107	Paragraph 33(5)(a)
4 5		Omit "management plan", substitute "management arrangement or authorisation process".
6	108	Paragraph 33(5)(b)
7 8		Omit "management plan", substitute "management arrangement or authorisation process".
9	109	Paragraph 33(5)(b)
10		After "House—", insert "subject to subsection (5A),".
11 12	Note:	The heading to subsection 33(5) is replaced by the heading "Limitations on accreditation during period for opposition".
13	110	After subsection 33(5)
14		Insert:
15		(5A) If:
16		(a) notice of a motion to oppose accreditation of the management
17		arrangement or authorisation process is given in a House of
18 19 20		the Parliament within 15 sitting days after the management arrangement or authorisation process is laid before the House under this section; and
21		(b) the notice is withdrawn or otherwise disposed of within 15
22		sitting days of that House after the notice is given;
23		then, subject to paragraph (5)(a), the Minister may accredit the
24		management arrangement or authorisation process after the motion
25		is withdrawn or otherwise disposed of.
26	111	Subsections 33(6) and (7)
27		Repeal the subsections, substitute:
28		No accreditation after accreditation opposed
29		(6) The Minister must not accredit the management arrangement or
30		authorisation process if either House of the Parliament passes a
31		resolution opposing accreditation of the management arrangement
32		or authorisation process following a motion of which notice has

1 2		been given within 15 sitting days after the management arrangement or relevant part of the law has been laid before the
3		House under this section.
4		No accreditation if motion not defeated in time
5		(7) The Minister must not accredit the management arrangement or
6		authorisation process if, at the end of 15 sitting days after notice of
7 8		a motion to oppose accreditation of the management arrangement or authorisation process that was given in a House of the
9		Parliament within 15 sitting days after the management
10		arrangement or relevant part of the law was laid before the House
11		under this section:
12 13		(a) the notice has not been withdrawn and the motion has not been called on; or
14		(b) the motion has been called on, moved and seconded and has
15		not been withdrawn or otherwise disposed of.
16	112	Paragraph 33(8)(a)
17		Omit "management plan", substitute "management arrangement or
18		authorisation process".
19	113	Subsection 33(8)
20 21		Omit "management plan" (last occurring), substitute "management arrangement or relevant part of the law".
22	114	Subsection 33(8)
23		After "(5),", insert "(5A),".
24	115	Sections 34B to 34D
25		Omit "management plan" (wherever occurring), substitute
26		"management arrangement or authorisation process".
27	116	After paragraph 34D(1)(c)
28		Insert:
29		(ca) the Minister has had regard to any approved conservation
30		advice for the species or community; and
31	117	At the end of subsection 34D(2)
32		Add:

1 2		; and (d) the Minister has had regard to any approved conservation advice for the species or community.
3	118	Sections 34E and 34F
4 5		Omit "management plan" (wherever occurring), substitute "management arrangement or authorisation process".
6	119	Paragraphs 35(2)(a) and (b)
7		Repeal the paragraphs, substitute:
8		(a) a declaration made under section 33 is revoked; and
9 10 11		(b) before the revocation, an action was being taken that could be taken without approval under Part 9 because its taking was covered by the declaration; and
12		(c) the action had not been completed before the revocation;
13	120	Section 36
14		Omit "management plan" (wherever occurring), substitute
15		"management arrangement or authorisation process".
16	121	At the end of Subdivision D of Division 2 of Part 4
17		Add:
18 19	36A	Minor amendments of accredited management arrangement or accredited authorisation process
20		(1) If:
21 22 23		 (a) a management arrangement or an authorisation process is an accredited management arrangement or an accredited authorisation process; and
24 25		(b) the management arrangement or authorisation process is amended, or is proposed to be amended; and
26		(c) the Minister is satisfied that the amendments are, or will be,
27		minor; and
28		(d) the Minister is satisfied that the management arrangement or
29		authorisation process as amended meets, or will meet, the
30		requirements of:
31 32		(i) paragraphs 33(3)(a), (b) and (c); and (ii) section 34A; and

1 2	(iii) subsection 34B(2), 34BA(2), 34C(2), 34D(2), 34E(2) or 34F(2) (as the case requires);
3	the Minister may, by instrument in writing, determine that this
4	section applies to the amendments.
5	(2) If the Minister makes a determination under subsection (1):
6	(a) the management arrangement or authorisation process as
7	amended is, for the purposes of this Act, taken to be an
8	accredited management arrangement or accredited
9	authorisation process; and
10	(b) subsections 33(1) to (8) do not apply in relation to the
11	amendments to the management arrangement or authorisation
12	process, or the management arrangement or authorisation
13	process as amended; and
14	(c) actions taken after the determination is made in accordance
15	with the accredited management arrangement or accredited authorisation process as amended do not require approval
16 17	under Part 9 for the purposes of a specified provision of
18	Part 3.
19 20	(3) The Minister must publish a determination under subsection (1) in accordance with the regulations (if any).
21	(4) A determination under subsection (1) is not a legislative
22	instrument.
23	122 After Division 2 of Part 4
24	Insert:
25	Division 3—Actions covered by Ministerial declarations
26	and bioregional plans
27	Subdivision A—Effect of declarations
28	37 Actions declared by Minister not to need approval
29	A person may take an action described in a provision of Part 3
30	without an approval under Part 9 for the purposes of the provision
31	if:
32	(a) the action is an action, or one of a class of actions, declared
33	by the Minister under section 37A not to require approval

1 2 3	under Part 9 for the purposes of the provision (because the taking of the action is in accordance with a particular bioregional plan); and
4	(b) the declaration is in operation when the action is taken; and
5	(c) the action is taken:
6	(i) in the bioregion to which the plan applies; and
7	(ii) in accordance with the plan.
8	Note: Division 2 of Part 12 deals with bioregional plans.
9	Subdivision B—Making declarations
10 11	37A Making declarations that actions do not need approval under Part 9
12	Subject to Subdivisions C and D, the Minister may, by legislative
13	instrument, declare that an action or class of actions specified in
14	the declaration, wholly or partly by reference to the fact that the
15	taking of the action or class of actions is in accordance with a
16	bioregional plan, do not require approval under Part 9 for the
17	purposes of a specified provision of Part 3.
18 19	Note 1: Subdivisions C and D set out rules about prerequisites for making a declaration and limits on making a declaration.
20	Note 2: Section 37K provides for revocation of a declaration.
21	Subdivision C—Prerequisites for making declarations
22	37B General considerations
23	(1) In deciding whether to make a declaration under section 37A, the
24	Minister must consider the following, so far as they are not
25	inconsistent with any other requirements of this Subdivision:
26	(a) matters relevant to any matter protected by a provision of
27	Part 3 that the Minister considers is relevant to the action or
28	class of actions to which the declaration relates;
29	(b) economic and social matters.
30	(2) In considering those matters, the Minister must take into account
31	the principles of ecologically sustainable development.
32	(3) The Minister must not make a declaration under section 37A in
33	relation to an action or class of actions and a provision of Part 3 if

1 2 3	the Minister considers that the action, or an action in the class, if taken, would have unacceptable or unsustainable impacts on a matter protected by the provision.
4	37C Minister may make declaration only if prescribed criteria are met
5	met
6 7	The Minister may make a declaration under section 37A only if the Minister is satisfied that the declaration:
8	(a) accords with the objects of this Act; and
9	(b) meets the requirements (if any) prescribed by the regulations.
10	37D Declarations relating to declared World Heritage properties
11 12	The Minister may make a declaration under section 37A relating to a declared World Heritage property only if:
13	(a) the Minister is satisfied that the declaration is not inconsistent
14	with Australia's obligations under the World Heritage
15	Convention; and
16	(b) the Minister is satisfied that the declaration will promote the
17	management of the property in accordance with the Australian World Heritage management principles; and
18	(c) the Minister is satisfied that the declaration is not inconsistent
19 20	with a plan that has been prepared for the management of the
21	declared World Heritage property under section 316 or as
22	described in section 321.
23	37E Declarations relating to National Heritage places
24 25	The Minister may make a declaration under section 37A relating to a National Heritage place only if:
26	(a) the Minister is satisfied that the declaration will promote the
27	management of the place in accordance with the National
28	Heritage management principles; and
29	(b) the Minister is satisfied that the declaration is not inconsistent
30	with:
31	(i) an agreement to which the Commonwealth is a party in
32	relation to the National Heritage place; or
33	(ii) a plan that has been prepared for the management of the National Heritage place under section 324S or as
34 35	described in section 324X.

1	37F	Declarations relating to declared Ramsar wetlands
2		The Minister may make a declaration under section 37A relating to
3		a declared Ramsar wetland only if:
4 5		(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the Ramsar Convention;
6		and
7		(b) the Minister is satisfied that the declaration will promote the
8 9		management of the wetland in accordance with the Australian Ramsar management principles.
10 11	37G	Declarations relating to listed threatened species and ecological communities
10		The Minister may make a declaration under coetion 27A relating to
12 13		The Minister may make a declaration under section 37A relating to a listed threatened species or a listed threatened ecological
14		community only if:
15		(a) the Minister is satisfied that the declaration is not inconsistent
16		with Australia's obligations under:
17		(i) the Biodiversity Convention; or
18		(ii) the Apia Convention; or
19		(iii) CITES; and
20		(b) the Minister is satisfied that the declaration will promote the
21		survival and/or enhance the conservation status of each
22		species or community to which the declaration relates; and
23		(c) the Minister is satisfied that the declaration is not inconsistent
24 25		with any recovery plan for the species or community or a threat abatement plan; and
26		(d) the Minister has had regard to any approved conservation
27		advice for the species or community.
28	37H	Declarations relating to listed migratory species
29		The Minister may make a declaration under section 37A relating to
30		a listed migratory species only if:
31		(a) the Minister is satisfied that the declaration is not inconsistent
32		with whichever of the following conventions or agreements
33		because of which the species is listed:
34		(i) the Bonn Convention;
35		(ii) CAMBA;

1	(iii) JAMBA;
2	(iv) an international agreement approved under subsection
3	209(4); and
4	(b) the Minister is satisfied that the declaration will promote the
5	survival and/or enhance the conservation status of each
6	species to which the declaration relates.
7	37J No declarations relating to nuclear actions
8	The Minister must not make a declaration relating to an action
9	consisting of, or involving the construction or operation of, any of
0	the following nuclear installations:
1	(a) a nuclear fuel fabrication plant;
2	(b) a nuclear power plant;
13	(c) an enrichment plant;
4	(d) a reprocessing facility.
15	Subdivision D—Other rules about declarations
16	37K Revoking declarations
.7	Revoking declarations
18	(1) The Minister may, by legislative instrument, revoke a declaration made under section 37A.
20	Revocation does not affect some actions
21	(2) If:
22	(a) a declaration made under section 37A is revoked; and
23	(b) before the revocation, an action was being taken that could be
24	taken without approval under Part 9 because its taking was
25	covered by the declaration; and
26	(c) the action had not been completed before the revocation;
27	this Act continues to operate in relation to the action as if the
28	declaration had not been revoked.

1	37L Other rules about declarations
2	Minister must not give preference
3	(1) In making a declaration under section 37A, or revoking a
4	declaration under section 37K, relating to an action taken:
5	(a) by a person for the purposes of trade or commerce between
6	Australia and another country or between 2 States; or
7	(b) by a constitutional corporation;
8	the Minister must not give preference (within the meaning of
9 10	section 99 of the Constitution) to one State or part of a State over another State or part of a State.
11	Publishing declarations
12	(2) Within 10 business days after the Minister makes a declaration
13	under section 37A, or an instrument under section 37K revoking a
14	declaration, the Minister must publish the declaration or instrument
15	in accordance with the regulations.
16	Division 3A—Actions covered by conservation agreements
17	37M Actions declared by conservation agreement not to need
18	approval
19	A person may take an action described in a provision of Part 3
20	without an approval under Part 9 for the purposes of the provision
21	if:
22	(a) the action is included in a class of actions declared in a
23	conservation agreement, in accordance with section 306A,
24 25	not to require approval under Part 9 for the purposes of the provision; and
	(b) the conservation agreement is in operation when the action is
26 27	taken; and
28	(c) the action is taken in accordance with the conditions (if any)
29	specified in the declaration.
30	123 Paragraph 43A(1)(b)
31	Repeal the paragraph, substitute:
32	(b) before the commencement of this Act, the action was
33	authorised by a specific environmental authorisation; and

1	124	Paragraph 43A(1)(c)
2		After "no further", insert "specific".
3	125	At the end of subsection 43A(1)
4		Add:
5		; and (d) at the time the action is taken, the specific environmental
6		authorisation continues to be in force.
7	126	After subsection 43A(1)
8		Insert:
9		(1A) For the purposes of paragraphs (1)(c) and (d), a renewal or
10		extension of a specific environmental authorisation is taken to be a
11		new specific environmental authorisation unless:
12		(a) the action that is authorised by the authorisation following
13		the renewal or extension is the same as the action that was
14		authorised by the authorisation before the commencement of
15		this Act; and
16		(b) the renewal or extension could properly be made or given
17 18		without any further consideration of the environmental impacts of the action.
19 20 21		Note: If a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation, the condition in paragraph (1)(c) or (d) would not be met.
22	127	Subsection 43A(2)
23		Omit "this section", substitute "this Act".
24	128	Subsection 43A(2)
25		Insert:
26		specific environmental authorisation means an environmental
27		authorisation that:
28		(a) identifies the particular action by reference to acts and
29		matters uniquely associated with that action; or
30		(b) was issued or granted following a consideration of the
31		particular action by reference to acts and matters uniquely
32		associated with that action.
33	129	Subsection 43B(1)

1 2		Omit "For this purpose, an enlargement, expansion or intensification of use is not a <i>continuation</i> of a use.".
3	130	Subsection 43B(2)
4		Repeal the subsection, substitute:
5		(2) However, subsection (1) does not apply to an action if:
6		(a) before the commencement of this Act, the action was
7		authorised by a specific environmental authorisation; and
8 9		(b) at the time the action is taken, the specific environmental authorisation continues to be in force.
10		Note: In that case, section 43A applies instead.
11 12		(3) For the purposes of this section, neither of the following is a <i>continuation</i> of a use of land, sea or seabed:
13		(a) an enlargement, expansion or intensification of use;
14		(b) either:
15 16		(i) any change in the location of where the use of the land, sea or seabed is occurring; or
17 18		(ii) any change in the nature of the activities comprising the use;
19 20		that results in a substantial increase in the impact of the use on the land, sea or seabed.
21	131	Subsection 46(1)
22		Omit "management plan that is a bilaterally accredited management
23		plan", substitute "management arrangement or authorisation process
24		that is a bilaterally accredited management arrangement or a bilaterally
25		accredited authorisation process".
26	132	Subsection 46(2)
27		Repeal the subsection, substitute:
28		What is a bilaterally accredited management arrangement?
29		(2) A management arrangement is a bilaterally accredited
30		management arrangement for the purposes of a bilateral
31		agreement declaring that certain actions do not require approval
32 33		under Part 9 for the purposes of a specified provision of Part 3 if and only if:
-		··· ·· · · · · · · · · · · · · · · · ·

1 2		(a) the management arrangement is in force under a law of the State or Territory that is a party to the agreement and the law
3		is identified in or under the agreement; and
4		(b) the management arrangement has been accredited in writing
5		by the Minister in accordance with this section for the
6		purposes of the agreement.
7		What is a bilaterally accredited authorisation process?
8		(2A) An authorisation process is a bilaterally accredited authorisation
9		process for the purposes of a bilateral agreement declaring that
10		certain actions do not require approval under Part 9 for the
11		purposes of a specified provision of Part 3 if and only if:
12		(a) the authorisation process is set out in a law of the State or
13		Territory that is a party to the agreement, and the law and the
14		process are identified in or under the agreement; and
15		(b) the authorisation process has been accredited in writing by
16		the Minister in accordance with this section for the purposes
17		of the agreement.
18	133	Subsection 46(3)
19		Omit ", the Minister may accredit in writing a management plan",
20		substitute "or (2A), the Minister may accredit in writing a management
21		arrangement or an authorisation process".
22 23	Note:	The heading to subsection 46(3) is altered by omitting "management plan" and substituting "management arrangement or authorisation process".
24	134	Paragraph 46(3)(a)
25		Repeal the paragraph, substitute:
26		(a) the management arrangement or authorisation process and
27		the law under which it is in force, or in which it is set out,
28		meet the criteria prescribed by the regulations; and
29	135	Paragraph 46(3)(b)
30		Omit "management plan", substitute "management arrangement or
31		authorisation process".
32	136	Paragraph 46(3)(c)
33		Omit "management plan", substitute "management arrangement or
34		authorisation process".
		•

1	137	Subsection 46(3)
2		Omit "management plan" (last occurring), substitute "management
3		arrangement or authorisation process".
4	138	Subsection 46(3) (note)
5		Omit "plan", substitute "management arrangement or an authorisation
6		process".
7	139	Subsection 46(4)
8		Repeal the subsection, substitute:
9		Tabling of management arrangement or authorisation process
10		before accreditation
11		(4) The Minister must cause to be laid before each House of the
12		Parliament a copy of:
13		(a) in the case of a management arrangement—the management
14		arrangement; or (b) in the case of an authorisation process—the relevant part of
15 16		the law in which the authorisation process is set out;
17		that the Minister is considering accrediting for the purposes of
18		subsection (2) or (2A).
19	140	Subsection 46(5)
20		Omit "management plan", substitute "management arrangement or
21		authorisation process".
22	141	Subsection 46(5)
23		After "(2)", insert "or (2A)".
24	142	Paragraph 46(5)(a)
25		Omit "the plan", substitute "the management arrangement or
26		authorisation process".
27	143	Paragraph 46(5)(b)
28		Omit "management plan", substitute "management arrangement or
29		authorisation process".
30	144	Paragraph 46(5)(b)

1		After "House—", insert "subject to subsection (5A),".
2 3	Note:	The heading to subsection 46(5) is replaced by the heading "Limitations on accreditation during period for disallowance".
4	145	After subsection 46(5)
5		Insert:
6		(5A) If:
7		(a) notice of a motion to disallow accreditation of the
8		management arrangement or authorisation process is given in
9		a House of the Parliament within 15 sitting days after the
10 11		management arrangement or authorisation process is laid before the House under this section; and
12 13		(b) the notice is withdrawn or otherwise disposed of within 15 sitting days of that House after the notice is given;
14		then, subject to paragraph (5)(a), the Minister may accredit the
15		management arrangement or authorisation process after the motion
16		is withdrawn or otherwise disposed of.
17	146	Subsections 46(6) and (7)
18		Repeal the subsections, substitute:
19		Disallowance motion passed
20		(6) The Minister must not accredit the management arrangement or
21		authorisation process if either House of the Parliament passes a
22		resolution disallowing the accreditation of the management
23		arrangement or authorisation process following a motion of which
24		notice has been given within 15 sitting days after the management
25		arrangement or relevant part of the law has been laid before the
26		House.
27		Disallowance motion not defeated in time
28		(7) The Minister must not accredit the management arrangement or
29		authorisation process if, at the end of 15 sitting days after notice of
30		a motion to disallow the management arrangement or authorisation
31		process that was given in a House of the Parliament within 15
32		sitting days after the management arrangement or relevant part of
33		the law was laid before the House:
34		(a) the notice has not been withdrawn and the motion has not
35		been called on; or

2		not been withdrawn or otherwise disposed of.
3	147	Paragraph 46(8)(a)
4 5		Omit "management plan", substitute "management arrangement or authorisation process".
6	148	Subsection 46(8)
7 8		Omit "management plan" (last occurring), substitute "management arrangement or relevant part of the law".
9	149	Subsection 46(8)
10		After "(5),", insert "(5A),".
11	150	Subsection 46(9)
12 13		Omit "management plan", insert "management arrangement or authorisation process".
14	151	Subsection 46(10)
15 16		Omit "The", substitute "If the declaration is for actions approved in accordance with a bilaterally accredited management arrangement, the".
17	152	Paragraphs 46(10)(a) and (b)
18 19 20		Omit "a management plan that is a bilaterally accredited management plan for the purposes of the agreement", substitute "the management arrangement".
21	153	Subsection 51(2)
22 23		Omit "management plan", substitute "management arrangement or an authorisation process".
24	154	Paragraphs 51(2)(a) and (b)
25 26		Omit "the plan", substitute "the management arrangement or authorisation process".
27	155	Subsection 51A(2)
28 29		Omit "management plan", substitute "management arrangement or an authorisation process".

1 2 3	156	Subsection 51A(2) Omit "the plan", substitute "the management arrangement or authorisation process".
4 5 6	157	Subsection 52(2) Omit "management plan", substitute "management arrangement or an authorisation process".
7 8 9	158	Paragraphs 52(2)(a) and (b) Omit "the plan", substitute "the management arrangement or authorisation process".
10 11 12 13	159	After paragraph 53(1)(c) Insert: (ca) the Minister has had regard to any approved conservation advice for the species or community; and
14 15 16	160	Subsection 53(2) Omit "management plan", substitute "management arrangement or an authorisation process".
17 18 19	161	Paragraphs 53(2)(a), (b) and (c) Omit "the plan", substitute "the management arrangement or authorisation process".
20 21 22 23	162	At the end of subsection 53(2) Add: ; and (d) the Minister has had regard to any approved conservation advice for the species or community.
24 25 26	163	Subsection 54(2) Omit "management plan", substitute "management arrangement or an authorisation process".
27 28 29	164	Paragraphs 54(2)(a) and (b) Omit "the plan", substitute "the management arrangement or authorisation process".
30	165	Section 55

1 2		Omit "management plan", substitute "management arrangement or an authorisation process".
3	166	At the end of Division 2 of Part 5
4		Add:
5	Sub	division C—Minor amendments of bilateral agreements
6 7	56A	Ministerial determination of minor amendments to bilateral agreements
		(1) This section applies if:
8 9 10		(a) the Minister intends to develop a draft amendment to a bilateral agreement (the <i>principal agreement</i>); and
11 12 13		(b) the Minister is satisfied that the amendment will not have a significant effect on the operation of the principal agreement; and
14		(c) the Minister makes a determination, in writing, to that effect.
15		(2) If the Minister makes a determination under paragraph (1)(c):
16 17		(a) the following provisions of this Part do not apply in relation to the amendment to the principal agreement:
18		(i) subsection 45(3);
19		(ii) paragraphs 45(4)(b) and (c);
20		(iii) section 49A; and
21		(b) the Minister must publish the principal agreement, as
22 23		amended by the amending agreement, at the same time as publishing the amending agreement under paragraph
24		45(4)(a).
25		(3) A determination made under paragraph (1)(c) is not a legislative
26		instrument.
27	167	Subsection 64(2)
28		Omit "management plan that is a bilaterally accredited management
29		plan", substitute "management arrangement or an authorisation process
30 31		that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process".
32	168	Subsections 65(1) and (2) (including the notes)

Act at the time when the agreement provides for it to cease to so have effect. Note: The parties to a bilateral agreement may also agree to revoke it. (2) The Minister must cause a review of the operation of a bilateral agreement to be carried out at least once every 5 years while the agreement remains in effect. The Minister must give a copy of the report of each review to the appropriate Minister of the State or Territory that is party to the agreement. Note: A bilateral agreement may also provide for review of its operation 169 Subsection 65(3) After "the report", insert "on each subsection (2) review". 170 Subsection 65A(2) Omit "management plan that was a bilaterally accredited management plan", substitute "management arrangement or an authorisation proceed that was a bilaterally accredited management arrangement or an abilaterally accredited authorisation process". 171 After paragraph 66(c) Insert: (ca) information included in the referral; or 172 Section 67 After "would be", insert "(or would, but for section 25AA or 28AB, be)". 173 After section 67 Insert: 67A Prohibition on taking controlled action without approval A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part of the section and the part of the section and the part of the taking of the action by the person is in operation under Part of the section by the person is in operation under Part of the section by the person is in operation under Part of the section by the person is in operation under Part of the section by the person is in operation under Part of the section by the person is in operation under Part of the section by the person is in operation under Part of the section by the person is in operation under Part of the section by the person is in operation.	1	Repeal the subsections, substitute:
(2) The Minister must cause a review of the operation of a bilateral agreement to be carried out at least once every 5 years while the agreement remains in effect. The Minister must give a copy of t report of each review to the appropriate Minister of the State or Territory that is party to the agreement. Note: A bilateral agreement may also provide for review of its operation 169 Subsection 65(3) After "the report", insert "on each subsection (2) review". 170 Subsection 65A(2) Omit "management plan that was a bilaterally accredited management plan", substitute "management arrangement or an authorisation proceed that was a bilaterally accredited management arrangement or a bilaterally accredited authorisation process". 171 After paragraph 66(c) Insert: (ca) information included in the referral; or 172 Section 67 After "would be", insert "(or would, but for section 25AA or 28AB, be)". 173 After section 67 Insert: 67A Prohibition on taking controlled action without approval A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part of the section of the taking of the action by the person is in operation under Part of the section of the taking of the action by the person is in operation under Part of the section of the taking of the action by the person is in operation under Part of the section of the taking of the action by the person is in operation under Part of the section of the taking of the action by the person is in operation under Part of the section of the taking of the action by the person is in operation under Part of the section of the section of the section of the taking of the action by the person is in operation under Part of the section of the sect	3	(1) A bilateral agreement ceases to have effect for the purposes of this Act at the time when the agreement provides for it to cease to so have effect.
agreement to be carried out at least once every 5 years while the agreement remains in effect. The Minister must give a copy of t report of each review to the appropriate Minister of the State or Territory that is party to the agreement. Note: A bilateral agreement may also provide for review of its operation 169 Subsection 65(3) After "the report", insert "on each subsection (2) review". 170 Subsection 65A(2) Omit "management plan that was a bilaterally accredited management plan", substitute "management arrangement or an authorisation proceed that was a bilaterally accredited management arrangement or a bilaterally accredited authorisation process". 171 After paragraph 66(c) Insert: (ca) information included in the referral; or 172 Section 67 After "would be", insert "(or would, but for section 25AA or 28AB, be)". 173 After section 67 Insert: 67A Prohibition on taking controlled action without approval A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part of the State of the S	5	Note: The parties to a bilateral agreement may also agree to revoke it.
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22 172 Section 67 After "would be", insert "(or would, but for section 25AA or 28AB, be)". 23 173 After section 67 Insert: 26 67A Prohibition on taking controlled action without approval 28 A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part of the section of the secti		
After "would be", insert "(or would, but for section 25AA or 28AB, be)". 173 After section 67 Insert: 67A Prohibition on taking controlled action without approval A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part 9	21	(ca) information included in the referral; or
Insert: 67A Prohibition on taking controlled action without approval A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part 9	23	After "would be", insert "(or would, but for section 25AA or 28AB,
A person must not take a controlled action unless an approval the taking of the action by the person is in operation under Part 9	25 1	73 After section 67
A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part 9	26	Insert:
the taking of the action by the person is in operation under Part	27 6	7A Prohibition on taking controlled action without approval
	29	A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the relevant provision of Part 3.

	Note:	A person can be restrained from contravening this section by an injunction under section 475.
174	At the end o	of section 68
	Add:	
	(6) This sec	tion is affected by section 68A.
175	After section	n 68
	Insert:	
68A	Actions prop	osed to be taken under a contract etc.
	(1) This sec	tion applies in relation to an action that is proposed to be
		der a contract or an agreement, arrangement or
		anding, other than: subcontract; or
		agreement, arrangement or understanding entered into for
		e purposes of a contract or another agreement, arrangement
	or	understanding.
	Note:	A person proposing to take an action under a subcontract, or an agreement, arrangement or understanding entered into for the purposes
		of a contract or another agreement, arrangement or understanding, is
		not required or permitted to refer the proposal to take the action to the Minister under section 68.
	(2) For the p	ourposes of section 68 and subject to subsection (3), a
		e to, or relating to, a person proposing to take the action is
		nce to, or relating to, any of the following persons:
	_	party to the contract, agreement, arrangement or derstanding for whose benefit the action is proposed to be
		Ken;
		person who:
		i) requested or procured, or proposes to request or procure,
		the creation of the contract, agreement, arrangement or
		understanding; and
	(ii	i) is to be responsible for controlling and directing the
		taking of the proposed action.
		on (the <i>first person</i>) referred to in paragraph (2)(a) or (b)
	refers a p	proposal to take the action to the Minister under section 68:
	175	174 At the end of Add: (6) This section Insert: 68A Actions proposed (1) This sect taken understated (a) as (b) and the or Note: (2) For the preference a reference a reference (a) a puntaked (b) a puntaked (c) (iii) (3) If a persection (a) a persection (b) a persection (c) (iii)

1 2		(a) no other person is required or permitted to refer a proposal to take the action to the Minister under section 68; and
3		(b) for the purposes of this Chapter, a reference to, or relating to,
4 5		the person proposing to take the action is a reference to, or relating to, the first person.
6		(4) For the purposes of this section, a reference to a contract or
7		subcontract or an agreement, arrangement or understanding
8 9		includes a reference to a proposed contract, proposed subcontract, proposed agreement, proposed arrangement or proposed
10		understanding.
1		(5) Nothing in this section is intended to affect the capacity of a person
2		to refer a proposal to take an action to the Minister under
13		subsection $68(1)$ or (2) on behalf of the person proposing to take the action.
15	176	Subsection 70(7)
16		Repeal the subsection.
17	177	Subsection 71(1)
18		Omit "(except the Minister)".
9	178	At the end of section 72
20		Add:
21 22		(3) A referral of a proposal to take an action may include alternative proposals relating to any of the following:
23		(a) the location where the action is to be taken;
24		(b) the time frames within which the action is to be taken;
25		(c) the activities that are to be carried out in taking the action.
26	179	After subsection 74(1)
27		Insert:
28		Inviting comments from the Australian Heritage Council
29		(1A) If the Minister thinks, in relation to an action that is the subject of a
80		proposal referred to the Minister, that section 15B or 15C could be
31		a controlling provision for the proposed action because of National
32		Heritage values of a National Heritage place, the Minister may

1 2 3		com	the Australian Heritage Council to give the Minister ments, within 10 business days (measured in Canberra), on ther the proposed action is a controlled action.
4 5		Note	Sections 15B and 15C protect the National Heritage values of National Heritage places.
6 7		prop	e Minister thinks, in relation to an action that is the subject of a losal referred to the Minister, that section 23, 24A, 26, 27A,
8 9 10		actio	on because of heritage values of a place, the Minister may the the Australian Heritage Council to give the Minister
11 12		com	ments, within 10 business days (measured in Canberra), on ther the proposed action is a controlled action.
13 14 15		Note	Sections 23, 24A, 26, 27A, 27B, 27C and 28 protect the environment, which includes the heritage values of places. See the definition of <i>environment</i> in section 528.
16	180	Subsect	on 74(2)
17 18		Omit all note), su	the words after "self-governing Territory," (not including the ostitute:
19		the l	Environment Minister must, if he or she thinks the action may
20 21			e an impact on a matter protected by a provision of Division 1 art 3 (about matters of national environmental significance):
22		(a)	inform the appropriate Minister of the State or Territory; and
23 24		(b)	invite that Minister to give the Environment Minister within 10 business days:
25 26			(i) comments on whether the proposed action is a controlled action; and
27			(ii) information relevant to deciding which approach would
28			be appropriate to assess the relevant impacts of the
29 30			action (including if the action could be assessed under a bilateral agreement).
31	181		nd of subsection 74(3)
32		Add:	
33		Note	If the action is also the subject of a permit application under section 200, 215, 237 or 257 and the application is made at the same
34 35			time as the referral, the referral and invitation for comments that must
36			be published under this subsection may be published together with the
37 38			application and invitation for comments that must be published under section 200, 215, 237 or 257.

1	182 After subsection 74(3)
2	Insert:
3	Non-disclosure of commercial-in-confidence information
4	(3A) The Environment Minister may refuse to cause to be published on
5	the Internet, under subsection (3), so much of the information
6 7	included in a referral as the Minister is satisfied is commercial-in-confidence.
8	(3B) The Environment Minister must not be satisfied that particular
9	information included in a referral is commercial-in-confidence
10	unless a person demonstrates to the Minister that:
11 12	(a) release of the information would cause competitive detrimen to the person; and
13	(b) the information is not in the public domain; and
14	(c) the information is not required to be disclosed under another
15	law of the Commonwealth, a State or a Territory; and
16	(d) the information is not readily discoverable.
17	183 Subsection 74(4)
18	Repeal the subsection.
19	184 At the end of Division 1 of Part 7
20	Add:
21 22	74AA Offence of taking action before decision made in relation to referral etc.
23 24	Referral made: taking action while decision making process still going on
25	(1) A person commits an offence if:
26	(a) the person takes an action; and
27	(b) either:
28	(i) a proposal to take the action (or a larger action of which
29	the action is a component) has been referred to the
30	Minister by the person under section 68; or
31	(ii) a proposal to take the action (or a larger action of which
32	the action is a component) has been referred to the

1 2		Minister under section 69 or 71 and the person has been informed of the referral under section 73; and
3	(c)	the referral has not been withdrawn under section 170C; and
4	` '	the Minister has not decided under subsection 74A(1) not to
5		accept the referral; and
6	(e)	provisions of this Chapter are not stopped by Division 1A
7		from applying in relation to the referral; and
8	` '	provisions of this Chapter are not stopped by section 155
9		from applying because of the referral in relation to the action
10		(or a larger action of which the action is a component); and
11 12		no decision that the action (or a larger action of which the action is a component) is not a controlled action is in
13		operation under section 75 in relation to the referral; and
14		no decision is in operation under Part 9 in relation to the
15		referral approving, or not approving, the taking of the action
16		(or a larger action of which the action is a component).
17	Penal	ty: 500 penalty units.
18	Note:	Chapter 2 of the Criminal Code sets out the general principles of
19		criminal responsibility.
20	(2) Subse	ection (1) does not apply to the taking of an action by a person
21	if:	
22		the taking of the action is reasonably necessary in order to
23 24		comply with a requirement or request made under this Part or Part 8 or 9 in relation to the action (or a larger action of
24 25		which the action is a component); and
26		before taking the action, the person gave the Minister written
27		notice of the taking of the action; and
28	(c)	the notice was given in accordance with any applicable
29		requirements of the regulations.
30	Note:	A defendant bears an evidential burden in relation to the matters in
31		subsection (1): see subsection 13.3(3) of the <i>Criminal Code</i> .
32	Refer	ral requested: taking action before requested referral is made
33	(3) A per	son commits an offence if:
34	(a)	the person takes an action; and
35		the Minister, under section 70, has requested the referral by
36		the person of a proposal to take the action (or a larger action
37		of which the action is a component) to the Minister; and

1	(c) the request has not been revoked; and
2	(d) the referral has not been made.
3	Penalty: 500 penalty units.
4 5	Note: Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.
6	185 After Division 1 of Part 7
7	Insert:
8	Division 1A—Decision that action is clearly unacceptable
9	74B Application of this Division
10	(1) This Division applies to the referral of a proposal to take an action if, within 20 business days after the Minister receives the referral:
12	(a) the Minister considers, on the basis of the information in the referral, that it is clear that the action would have
14 15	unacceptable impacts on a matter protected by a provision of Part 3; and
l6 l7	(b) the Minister decides that this Division should apply to the referral.
18 19 20	(2) If this Division applies to a referral, any other provisions of this Chapter that would, apart from this subsection, have applied to the referral cease to apply to the referral.
21	(3) Subsection (2) has effect subject to paragraph 74D(6)(a).
22	74C Informing person proposing to take action that action is clearly unacceptable
24	(1) As soon as practicable after making the decision under paragraph
25	74B(1)(b) in relation to a referral, the Minister must give written notice of the decision to:
26 27	(a) the person proposing to take the action that is the subject of
28	the referral; and
29	(b) the person who referred the proposal to the Minister (if that
30 31	person is not the person proposing to take the action that is the subject of the referral).
32	(2) The notice must:

1 2 3	 (a) state that the Minister considers that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and
4	(b) set out the reasons for the Minister's decision.
5	(3) After receiving the notice under subsection (1), the person
6	proposing to take the action may:
7 8	(a) withdraw the referral and take no further action in relation to the proposed action; or
9	(b) withdraw the referral and refer a new proposal to take a
10 11	modified action to the Minister in accordance with Division 1; or
12	(c) request the Minister, in writing, to reconsider the referral.
13	Note 1: Section 170C sets out the procedure for withdrawing a referral.
14 15	Note 2: A referral of a proposal to take a modified action will be a new referral for the purposes of this Chapter.
16	74D Procedure if Minister is requested to reconsider referral
17	(1) This section applies if the Minister receives a request under
18	paragraph 74C(3)(c) to reconsider a referral.
19	Inviting public comment
20 21	(2) The Minister must, within 10 business days after receiving the request, publish on the Internet:
	(a) a notice stating that the Minister proposes not to approve the
22 23	taking of the action that is the subject of the referral; and
24	(b) the reasons for the Minister's decision; and
25	(c) an invitation for anyone to give the Secretary, within 10
26	business days (measured in Canberra), comments in writing
27	on:
28	(i) the impacts that the action would have on a matter
29	protected by a provision of Part 3; and
30 31	(ii) the Minister's proposal to refuse to approve the taking of the action.
32	Report about relevant impacts of action
33	(3) Within 10 business days after the end of the period for comment
34	under paragraph (2)(c), the Secretary must:

1 2	(a) prepare a written report about the relevant impacts that the action has or will have, or is likely to have, on a matter
3	protected by a provision of Part 3; and
4	(b) give the Minister:
5	(i) the report; and
6	(ii) a copy of any comments received by the Secretary
7	within the period for comment.
8	In preparing the report, the Secretary must have regard to the
9	comments referred to in subparagraph (b)(ii).
10	Decision following reconsideration
11	(4) Within 20 business days after receiving the report under
12	subsection (3), the Minister must:
13	(a) if the Minister still considers that it is clear that the action
14	would have unacceptable impacts on a matter protected by a
15	provision of Part 3—decide to refuse to approve the taking of
16	the action; or
17	(b) decide that the referral is to be dealt with under the
18	provisions of this Chapter that, because of subsection 74B(2)
19	have ceased to apply to the referral.
20	(5) If the Minister decides to refuse to approve the taking of the action
21	the Minister must, within 10 business days after making the
22	decision, give notice of the decision to:
23	(a) the person proposing to take the action; and
24	(b) the person who referred the proposal to the Minister (if that
25	person is not the person proposing to take the action).
26	Note: The person proposing to take the action may request reasons for the
27	refusal and the Minister must give them. See section 13 of the
28	Administrative Decisions (Judicial Review) Act 1977.
29	(6) If the Minister makes a decision under paragraph (4)(b):
30	(a) the provisions of this Chapter that, because of subsection
31	74B(2), have ceased to apply to the referral start to apply to
32	the referral; and
33	(b) for the purposes of the application of those provisions, a day
34	is not to be counted as a business day if it is:
35	(i) on or after the day the Minister received the referral;
36	and

1 2			(ii) on or before the day the Minister makes the decision under paragraph (4)(b).
3 4 5 6		Note:	If the Minister had already complied with section 74 in relation to the referral before the Minister made the decision under paragraph 74B(1)(b) in relation to the referral, the Minister is not required to comply with section 74 again.
7	186	At the end	d of subsection 75(1)
8		Add:	
9 10		Note:	The Minister may revoke a decision made under subsection (1) about an action and substitute a new decision. See section 78.
11	187	Paragraph	h 75(1A)(a)
12		Omit "(if a	nny)".
13	188	At the end	d of subsection 75(2)
14		Add:	
15		Note:	<i>Impact</i> is defined in section 527E.
16	189	After subs	section 75(2)
17		Insert:	
18		(2A) For th	ne purposes of subsection (2), if the provision of Part 3 is
19			ction 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 26(1) or
20			1), then the impacts of the action on the matter protected by
21		_	rovision are only those impacts that the part of the action that
22			en in or on a Commonwealth area, a Territory, a nonwealth marine area or Commonwealth land:
2324			has or will have; or
25			is likely to have;
26			e matter.
27			out otherwise limiting any adverse impacts that the Minister
28 29			consider under paragraph (2)(a), the Minister must not der any adverse impacts of:
30			any RFA forestry operation to which, under Division 4 of
31			Part 4, Part 3 does not apply; or
32			any forestry operations in an RFA region that may, under
33			Division 4 of Part 4, be undertaken without approval under
34			Part 9.

1	190	Subsection 75(5)
2		Repeal the subsection (not including the heading), substitute:
3 4 5 6		(5) The Minister must make the decisions under subsection (1) and, if applicable, the designation under subsection (3), within 20 business days after the Minister receives the referral of the proposal to take the action.
7 8 9 10 11 12		Note: If the Minister decides, under subsection 75(1), that the action is a controlled action, the Minister must, unless the Minister has requested more information under subsection 76(3) or section 89, decide on the approach to be used for assessment of the relevant impacts of the action on the same day as the Minister makes the decision under subsection 75(1)—see subsection 88(2).
13	191	Subsection 75(6)
14		Omit "section 76", substitute "subsection 76(1) or (2)".
15	192	Section 76
16		Before "If the Minister", insert "(1)".
17	Note:	The heading to section 76 is altered by omitting "decision" and substituting "decisions".
18	193	At the end of section 76
19		Add:
20		(2) Before the Minister makes the decisions under subsection 75(1) in
21		relation to the action, the Minister may request the person
22		proposing to take the action to provide information about whether or not the action is a component of a larger action that is proposed
2324		to be taken by the person.
25		(3) If the Minister believes on reasonable grounds that the information
26		given to the Minister in relation to the action is not enough to allow
27		the Minister to make an informed decision on the approach to be
28		used for assessment of the relevant impacts of the action, the
29 30		Minister may request the person proposing to take the action to provide specified information relevant to making the decision.
31		(4) Without limiting subsection (3), if the action is to be taken in a
32		State or self-governing Territory, the Minister may request the
33		person proposing to take the action to provide information about:
34		(a) whether the relevant impacts of the action have been, or are
35		being, assessed by the State or Territory; and

1 2		(b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.
3 4 5		(5) The Minister may make a request under subsection (3) even if the Minister has not yet made the decisions under subsection 75(1) in relation to the action.
6	194	Subsection 77A(1)
7		Repeal the subsection, substitute:
8 9 10 11 12		(1) If, in deciding whether the action is a controlled action or not, the Minister has made a decision (the <i>component decision</i>) that a particular provision of Part 3 is not a controlling provision for the action because the Minister believes it will be taken in a particular manner, the notice, to be provided under section 77, must set out
13 14 15 16 17 18		Note: The Minister may decide that a provision of Part 3 is not a controlling provision for an action because he or she believes that the action will be taken in a manner that will ensure the action will not likely to have) an adverse impact on the matter protected by the provision.
19 20 21		(1A) For the purposes of subsection (1), it does not matter whether or not the Minister believes that the action will be taken in accordance with:
22 23 24		 (a) an accredited management arrangement or an accredited authorisation process for the purposes of a declaration under section 33; or
25 26		(b) a bioregional plan to which a declaration made under section 37A relates; or
27 28 29		(c) a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of a bilateral agreement.
30	195	Before section 78
31		Insert:
32	Div	ision 3—Reconsideration of decisions
33	196	Paragraphs 78(1)(b) and (c)
34		Repeal the paragraphs, substitute:
35		(b) the following requirements are met:

1 2	(i) the first decision was that the action was not a controlled action because the Minister believed the
3	action would be taken in the manner identified under
4	subsection 77A(1) in the notice given under section 77;
5	(ii) the Minister is satisfied that the action is not being, or
6	will not be, taken in the manner identified; or
7	(ba) the following requirements are met:
8	(i) the first decision was that the action was not a
9	controlled action because of a provision of a bilateral
10	agreement and a management arrangement or an
11	authorisation process that is a bilaterally accredited
12	management arrangement or a bilaterally accredited
13	authorisation process for the purposes of the agreement;
14	(ii) the provision of the agreement no longer operates in
15	relation to the action, or the management arrangement
16	or authorisation process is no longer in force under, or
17 18	set out in, a law of a State or a self-governing Territory identified in or under the agreement; or
19	(c) the following requirements are met:
	(i) the first decision was that the action was not a
20 21	controlled action because of a declaration under
22	section 33 and a management arrangement or an
23	authorisation process that is an accredited management
24	arrangement or an accredited authorisation process for
25	the purposes of the declaration;
26	(ii) the declaration no longer operates in relation to the
27	action, or the management arrangement or authorisation
28	process is no longer in operation under, or set out in, a
29	law of the Commonwealth identified in or under the
30	declaration; or
31	(ca) the following requirements are met:
32	(i) the first decision was that the action was not a
33	controlled action because of a declaration under
34	section 37A and a bioregional plan to which the
35	declaration relates;
36	(ii) the declaration no longer operates in relation to the
37	action, or the bioregional plan is no longer in force; or
38	197 At the end of subsection 78(1)
39	Add:

1 2 3		ľ	Note 1:	Subsection 75(1) provides for decisions about whether an action is a controlled action and what the controlling provisions for the action are.
4 5 6 7		1	Note 2:	A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca). See section 78A.
8 9 10 11		ſ	Note 3:	If the Minister decides to revoke a decision under subsection (1) and substitute a new decision for it, the Minister is not required to carry out the processes referred to in sections 73 and 74 again before making the new decision.
12	198	After	sectio	on 78
13		Insert	:	
14 15	78A	_		reconsideration of decision by person other than or Territory Minister
16 17 18 19		l	Ferritor under si	on (other than a Minister of a State or self-governing ry) may request the Minister to reconsider a decision made subsection 75(1) about an action on the basis of a matter I to in any of paragraphs 78(1)(a) to (ca).
20 21		ľ	Note:	Section 79 deals with requests for reconsideration by a Minister of a State or self-governing Territory.
22		(2) A	A reque	est under subsection (1) must:
23			(a) be	e in writing; and
24 25				et out the basis on which the person thinks the decision hould be reconsidered; and
26				the regulations specify other requirements for requests
27				nder subsection (1)—comply with those requirements.
28		(3) I	f a requ	uest is made under subsection (1) in relation to a decision
29				action is a controlled action, or that particular provisions are
30		C	controll	ling provisions for an action, then:
31				the request is made by the designated proponent of the
32				ction—Part 8 ceases to apply in relation to the action until
33				e Minister makes a decision in relation to the request; but
34				the request is made by another person—the application of
35				art 8 in relation to the action is not affected by the making
36			of	f the request (subject to the outcome of the reconsideration).
37		(4) I	f:	

1 2	(a) because of paragraph (3)(a), Part 8 has ceased to apply in relation to an action; and
3	(b) the Minister confirms the decision that is the subject of the
4	request under subsection (1);
5	then:
6	(c) the application of Part 8 in relation to the action resumes (as
7	does any assessment process under that Part that had
8	previously commenced in relation to the action); and
9 10	(d) for the purposes of the resumed application of Part 8, a day is not to be counted as a business day if it is:
11	(i) on or after the day the Minister received the request; and
12	(ii) on or before the day the Minister confirms the decision.
13	78B Minister must inform interested persons of request and invite
14	comments
15	(1) The Minister (the <i>Environment Minister</i>) must comply with this
16	section if he or she receives a request under section 78A to
17	reconsider a decision made under subsection 75(1) about an action.
18	Informing designated proponent of request and inviting comments
19	(2) If the request is made by a person other than the designated
20	proponent of the action, the Environment Minister must:
21 22	(a) inform the designated proponent of the request in accordance with subsection (3); and
23	(b) invite the designated proponent to give the Environment
24	Minister, within 10 business days, comments on the request.
25	(3) For the purpose of paragraph (2)(a), the Environment Minister
26	must inform the designated proponent of the request by giving the
27	designated proponent such information relating to the request as
28	the Minister considers appropriate. The Minister need not (for
29	example) reveal the identity of the person who made the request.
30	Inviting other Commonwealth Ministers to provide information
31	(4) The Environment Minister must:
32	(a) inform any other Minister who the Environment Minister
33	believes has administrative responsibilities relating to the
34	action of the request; and

1 2	(b) invite each Minister informed to give the Environment Minister, within 10 business days, information about whether
3	a matter referred to in any of paragraphs 78(1)(a) to (ca) is
4	applicable in relation to the action.
5	Inviting comments from appropriate State or Territory Minister
6	(5) If the request relates to an action proposed to be taken in a State or
7	self-governing Territory and the Environment Minister thinks the
8	action may have an impact on a matter protected by a provision of
9 10	Division 1 of Part 3 (about matters of national environmental significance), the Environment Minister must:
11	(a) inform the appropriate Minister of the State or Territory of
12	the request; and
13	(b) invite that Minister to give the Environment Minister, within
14	10 business days:
15	(i) comments on whether a matter referred to in any of
16	paragraphs 78(1)(a) to (ca) is applicable in relation to
17	the action; and
18	(ii) any other information that the Minister of the State or
19	Territory considers relevant to the reconsideration.
20	Note: Subsection (5) also applies in relation to a request that relates to an
21	action that is to be taken in an area offshore from a State or the
22	Northern Territory. See section 157.
23	Inviting public comment
24	(6) The Environment Minister must publish on the Internet:
25	(a) the request; and
26	(b) an invitation for anyone to give the Environment Minister,
27	within 10 business days (measured in Canberra), comments
28	in writing on whether a matter referred to in any of
29	paragraphs 78(1)(a) to (ca) is applicable in relation to the
30	action.
31	78C Minister must reconsider decision and give notice of outcome
32	Reconsideration of decision
33	(1) As soon as practicable after the end of the time within which
33 34	information or comments may be given under section 78B in
5-1	information of comments may be given under section 70B in

1 2	relation to a request under section 78A to reconsider a decision about an action, the Minister must:
3	(a) reconsider the decision; and
4	(b) either:
5	(i) confirm the decision; or
6	(ii) revoke the decision in accordance with subsection
7	78(1), and substitute a new decision for it.
8	Notice of outcome of reconsideration
9 10	(2) The Minister must give written notice of the outcome of the reconsideration to:
11	(a) the person who requested the reconsideration; and
12	(b) the person proposing to take the action (if that person is not
13	the person referred to in paragraph (a)); and
14	(c) the designated proponent of the action (if the designated
15	proponent is not the person referred to in paragraph (a) or
16	(b)); and
17	(d) if the reconsideration relates to an action referred to in
18	subsection 78B(5)—the appropriate Minister of the State or
19	Territory.
20	(3) After giving notice as described in subsection (2), the Minister
21	must publish notice of the outcome of the reconsideration. The
22	regulations may specify how the publication is to be made. Subject
23	to any such regulations, the publication must be made in a way the
24	Minister considers appropriate.
25	Reasons for outcome of reconsideration
26	(4) The Minister must give reasons for the outcome of the
27	reconsideration to a person who:
28	(a) has been given notice of the outcome of the reconsideration
29	under paragraph (2)(a), (b) or (c); and
30	(b) within 28 days after being given the notice, has requested the
31	Minister to provide reasons.
32	The Minister must do so as soon as practicable, and in any case
33	within 28 days after receiving the request.
34	199 Subsections 79(1) and (2)
35	Repeal the subsections, substitute:

1 2 3 4		(1) This section applies if the Minister (the <i>Environment Minister</i>) has made a decision under subsection 75(1) about whether a provision of Division 1 of Part 3 is a controlling provision for an action proposed to be taken in a State or a self-governing Territory.
5 6		Note 1: Division 1 of Part 3 deals with requirements for approvals for actions involving matters of national environmental significance.
7 8		Note 2: This section also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.
9 10 11 12 13		(2) Within 10 business days after the appropriate Minister of the State or Territory is notified of the decision under subparagraph 77(1)(a)(iii), that Minister may request the Environment Minister to reconsider the Environment Minister's decisions made under subsection 75(1).
14	200	After paragraph 80(a)
15		Insert:
16 17		(aa) an assessment on referral information (see Division 3A);
18	201	Subsection 82(2)
19		Omit "Division 1 or 2", substitute "Division 1, 2, 3 or 3A".
20	202	At the end of section 82
21		Add:
22		(4) For the purposes of subsections (1) and (2), if subsection 15B(3),
23		15C(5), 15C(6), 23(1), 24A(1), 26(1) or 27A(1) is, or would be, a
24 25		controlling provision for the action, then the impacts of the action on the matter protected by that provision are only those impacts
26		that the part of the action that is taken in or on a Commonwealth
27		area, a Territory, a Commonwealth marine area or Commonwealth
28		land:
29		(a) has or will have; or
30		(b) is likely to have;
31		on the matter.
32	203	After paragraph 85(a)
33		Insert:

1		(aa) an assessment on referral information;
2	204	Section 86
3		Repeal the section.
4	205	Subsection 87(1)
5 6		Omit "the action", substitute "an action that the Minister has decided is a controlled action".
7 8	206	After paragraph 87(1)(a) Insert:
9		(aa) assessment on referral information under Division 3A;
10	207	Subsection 87(2) Repeal the subsection.
12	208	Paragraph 87(3)(a)
13		Omit "or under section 86".
4	209	Paragraph 87(3)(c)
15		Omit "subsection (2)", substitute "subparagraph 74(2)(b)(ii)".
16	210	After subsection 87(4) Insert:
18		Assessment on referral information
20 21 22 23		(4A) The Minister may decide on an assessment on referral information under Division 3A only if the Minister is satisfied (after considering the matters in subsection (3)) that the action meets the criteria prescribed in the regulations for the purposes of this subsection.
24	211	Subsection 88(1)
25		Repeal the subsection (not including the heading or the note), substitute:
26 27		(1) The Minister must decide on the approach to be used for assessment of the relevant impacts of the action within 20 business

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

212	Subsections 88(2) and (3)
	Repeal the subsections, substitute:
	When initial decision must be made
	(2) The Minister must make the decision under subsection (1) on the
	same day as the Minister has decided, under subsection 75(1), that the action is a controlled action, unless the Minister has requested
	more information under subsection 76(3) or section 89 for the purposes of deciding on the approach to be used for assessment of the relevant impacts of the action.
213	Subsection 88(4)
	Omit "under section 89 for the purposes of deciding on the approach to
	be used for assessment of the relevant impacts of the action", substitute "in relation to the action under subsection $76(1)$, (2) or (3) or
	section 89".
214	Section 89
	Before "If the Minister", insert "(1).
215	At the end of section 89
	Add:
	(2) Without limiting subsection (1), if the action is to be taken in a State or self-governing Territory, the Minister may request the designated proponent of the action to provide information about:
	(a) whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and(b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.
	being, assessed by the State or Territory; and (b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.
216	being, assessed by the State or Territory; and(b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.(3) The Minister may make a request in relation to an action under this section even if the Minister has made a request under subsection

1	(i) the person proposing to take the action; and
2 3 4	(ia) the designated proponent of the action (if the designated proponent is not the person proposing to take the action); and
5	217 Division 4 of Part 8
6	Repeal the Division, substitute:
7	Division 3A—Assessment on referral information
8	92 Application of this Division
9	This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action
12	must be assessed by assessment on referral information under this Division.
13	93 Recommendation report
14	(1) The Secretary must comply with this section within 30 business days after the Minister makes the decision under section 87.
16 17	(2) The Secretary must prepare a draft recommendation report that includes recommendations on:
18 19	(a) whether the taking of the action should be approved under Part 9; and
20 21	(b) if approval is recommended, any conditions that should be attached to the approval.
22	(3) The Secretary must publish on the Internet:
23	(a) the draft recommendation report; and
24	(b) an invitation for anyone to give the Secretary, within 10
25	business days (measured in Canberra), comments in writing
26	relating to the draft recommendation report or the action.
27 28	(3A) The Secretary may refuse to publish on the Internet, under subsection (3), so much of the draft recommendation report as:
29	(a) is an exempt document under the Freedom of Information Act
80	1982 on the grounds of the security of the Commonwealth or
31	its providing advice to the Minister; or
32	(b) the Secretary is satisfied is commercial-in-confidence.

1	(3B) The Secretary must not be satisfied that a part of the draft
2	recommendation report is commercial-in-confidence unless a
3	person demonstrates to the Secretary that:
4	(a) release of the information in that part would cause
5	competitive detriment to the person; and
6	(b) the information in that part is not in the public domain; and
7	(c) the information in that part is not required to be disclosed
8	under another law of the Commonwealth, a State or a
9	Territory; and
10	(d) the information in that part is not readily discoverable.
11	(4) After the end of the period for comment, the Secretary must
12	finalise the draft recommendation report, taking account of any
13	comments received within that period.
14	(5) As soon as practicable after finalising the draft recommendation
15	report, the Secretary must give the Minister:
16	(a) the finalised recommendation report; and
17	(b) either:
18	(i) a copy of any comments received within the period for
19	comment; or
20 21	(ii) if no comments were received within that period—a written statement to that effect.
22	Division 4—Assessment on preliminary documentation
	r i j
23	94 Application of this Division
24	This Division applies in relation to an action if the Minister has
25	decided under section 87 that the relevant impacts of the action
26	must be assessed by assessment on preliminary documentation
27	under this Division.
28	95 Direction to publish referral information and invitation to
29	comment—no further information required
30	(1) This section applies if the Minister was satisfied, at the time of
31	making the decision (the <i>assessment approach decision</i>) under
32	section 87, that the Minister had enough information in relation to
33	the action to allow the Minister to assess the relevant impacts of
34	the action.

1 2	(2) At the same time as the Minister gives notice of the assessment approach decision to the designated proponent of the action under
3	paragraph 91(1)(a), the Minister must give the designated
4	proponent a written direction to publish, within the period specified
5	in the direction (not being less than 10 business days), in
6	accordance with the regulations:
7	(a) specified information included in the referral to the Minister
8	of the proposal to take the action; and
9	(b) specified information relating to the action that was given to
10	the Minister after the referral but before the Minister made
11	the assessment approach decision; and
12	(c) an invitation for anyone to give the designated proponent,
13	within the period specified in the direction, comments in
14	writing relating to the information or the action.
15	(3) The designated proponent must comply with the direction.
16 17	Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.
18	(4) A direction given under subsection (2) is not a legislative
19	instrument.
20	95A Direction to publish referral information and invitation to
20 21	95A Direction to publish referral information and invitation to comment—further information required
21	comment—further information required
21 22	comment—further information required(1) This section applies if the Minister was not satisfied, at the time of
21	 comment—further information required (1) This section applies if the Minister was not satisfied, at the time of making the decision (the assessment approach decision) under
21 22 23	comment—further information required(1) This section applies if the Minister was not satisfied, at the time of
21 22 23 24	 comment—further information required (1) This section applies if the Minister was not satisfied, at the time of making the decision (the assessment approach decision) under section 87, that the Minister had enough information in relation to
21 22 23 24 25 26	 comment—further information required (1) This section applies if the Minister was not satisfied, at the time of making the decision (the assessment approach decision) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.
21 22 23 24 25 26	 comment—further information required (1) This section applies if the Minister was not satisfied, at the time of making the decision (the <i>assessment approach decision</i>) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action. (2) Within 10 business days after the Minister gives notice of the
21 22 23 24 25 26 27 28	 comment—further information required (1) This section applies if the Minister was not satisfied, at the time of making the decision (the assessment approach decision) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action. (2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the
221 222 223 224 225 226 227 228 229	 comment—further information required (1) This section applies if the Minister was not satisfied, at the time of making the decision (the assessment approach decision) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action. (2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the
21 22 23 24 25 26 27 28 29 30	 comment—further information required (1) This section applies if the Minister was not satisfied, at the time of making the decision (the assessment approach decision) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action. (2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the designated proponent to give the Minister specified information
221 222 223 224 225 226 227 228 229	 comment—further information required (1) This section applies if the Minister was not satisfied, at the time of making the decision (the assessment approach decision) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action. (2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the
21 22 23 24 25 26 27 28 29 30 31 32	 (1) This section applies if the Minister was not satisfied, at the time of making the decision (the <i>assessment approach decision</i>) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action. (2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the designated proponent to give the Minister specified information relevant to assessing the relevant impacts of the action, including information about strategies for mitigating any adverse impacts.
21 22 23 24 25 26 27 28 29 30 31 32	 (1) This section applies if the Minister was not satisfied, at the time of making the decision (the <i>assessment approach decision</i>) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action. (2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the designated proponent to give the Minister specified information relevant to assessing the relevant impacts of the action, including information about strategies for mitigating any adverse impacts. (3) Within 10 business days after receiving the information requested
21 22 23 24 25 26 27 28 29 30 31 32	 (1) This section applies if the Minister was not satisfied, at the time of making the decision (the <i>assessment approach decision</i>) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action. (2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the designated proponent to give the Minister specified information relevant to assessing the relevant impacts of the action, including information about strategies for mitigating any adverse impacts.

1 2	in the direction (not being less than 10 business days), in accordance with the regulations:	
3	(a) specified information included in the referral to the Min	ister
4	of the proposal to take the action; and	15001
5	(b) specified information relating to the action that was give	en to
6	the Minister after the referral but before the Minister ma	ıde
7	the assessment approach decision; and	
8	(c) specified information relating to the action that was rece	eived
9	in response to the Minister's request under subsection (2	2);
10	and	
11	(d) an invitation for anyone to give the designated proponer	
12	within the period specified in the direction, comments in	1
13	writing relating to the information or the action.	
14	(4) The designated proponent must comply with the direction.	
15	Note: If the designated proponent does not comply with the direction,	the
16	Minister may take action under section 155.	
17	(5) A direction given under subsection (3) is not a legislative	
18	instrument.	
10	05B Procedure after and of period for comment	
19	95B Procedure after end of period for comment	
20	Procedure if comments are received	
21	(1) If comments are received by the designated proponent within	the
22	period for comment, the designated proponent must, as soon a	as
23	practicable after the end of that period:	
24	(a) prepare a document that:	
25	(i) sets out the information given to the Minister previ	ously
26	in relation to the action, with any changes or additi	ons
27	needed to take account of the comments; and	
28	(ii) contains a summary of the comments received and	how
29	those comments have been addressed; and	
30	(b) give the Minister:	
31	(i) a copy of the document prepared under paragraph ((a);
31 32	(i) a copy of the document prepared under paragraph (and	(a);
		(a);
32	and	
32 33	and (ii) a copy of the comments received.	ven

1 2 3			designated proponent must publish, in accordance with the regulations, a copy of the document prepared under paragraph (1)(a).
4			Procedure if no comments are received
5		(3)	If no comments are received by the designated proponent within
6			the period for comment, the designated proponent must, as soon as
7			practicable after the end of that period, give the Minister a written
8			statement to that effect.
9		(4)	Within 10 business days after the designated proponent has given
0			the Minister the statement referred to in subsection (3), the
1			designated proponent must publish, in accordance with the
12			regulations, a copy of the information referred to in paragraphs
13			95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires.
14			Definition
15		(5)	In this section:
6			period for comment means the period within which comments may
7			be given under 95(2)(c) or 95A(3)(d), as the case requires.
18	95C	Reco	mmendation report
19		(1)	The Secretary must prepare, and give to the Minister, a
20			recommendation report relating to the action. The report must
21			include recommendations on:
22			(a) whether the taking of the action should be approved under
23			Part 9; and
24			(b) if approval is recommended, any conditions that should be
25			attached to the approval.
26		(2)	The recommendation report must be given to the Minister after the
27		` '	Minister receives the documents under subsection 95B(1) or the
28			statement under subsection 95B(3), as the case requires, and before
29			the end of the period applicable under paragraph 130(1B)(c) in
80			relation to the action.
31 32			Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.
33	218	After	section 96

1	Insert:
2 3	96A Minister must give designated proponent written guidelines for preparation of draft public environment report
4 5 6 7	(1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft public environment report about the relevant impacts of the action. The guidelines so given are referred to as the <i>PER guidelines</i> .
8 9 10 11 12 13 14	 (2) The PER guidelines must be: (a) one or more sets of standard guidelines prepared under section 96B that the Minister decides are appropriate for the preparation of the draft report in relation to the action; or (b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft report in relation to the action—tailored guidelines prepared under section 97.
15 16 17 18 19 20 21 22 23 24 25	 (3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft report in relation to the action, the Minister must seek to ensure that the draft report, if prepared in accordance with those guidelines, will: (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and (b) address the matters (if any) prescribed by the regulations. Note: Similar considerations apply in relation to tailored guidelines: see subsection 97(2).
26 27 28 29 30 31 32 33 34	 (4) The Minister must give the PER guidelines to the designated proponent: (a) within 20 business days after the assessment approach decision was made under section 87; or (b) if the Minister, under section 97, invites a person to comment on a draft of tailored guidelines for the preparation of the draft report within a specified period—within 20 business days after: (i) the end of that period; or

or latest of those periods.

35

36

(ii) if there is more than one such period, the end of the later

1	96B	Standard guidelines
2 3 4		(1) The Minister may prepare one or more sets of standard guidelines, in writing, for the preparation of draft public environment reports about the relevant impacts of actions.
5		Note: See also subsection 96A(3).
6 7 8		(2) A set of standard guidelines must set out requirements for the content and presentation of draft public environment reports about the relevant impacts of actions.
9 10		(3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:
11 12		(a) actions that are proposed to be taken by a specified industry sector; or
13 14		(b) actions for which a specified provision of Part 3 is a controlling provision.
15 16		(4) A set of standard guidelines made under this section is not a legislative instrument.
17	219	Subsection 97(1)
18		Repeal the subsection, substitute:
19 20 21 22 23		(1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft public environment report about the relevant impacts of an action if the Minister decides that standard guidelines are not appropriate for the preparation of the draft report in relation to that action.
24 25		(1A) Tailored guidelines must set out requirements for the content and presentation of the draft report in relation to the action.
26	Note:	The heading to section 97 is replaced by the heading "Tailored guidelines".
27 28	220	Subsection 97(2) Omit "the guidelines", substitute "tailored guidelines".
29 30	221	Subsection 97(3) Omit "The guidelines", substitute "Tailored guidelines".
31 32	222	Paragraph 97(4)(b) Before "guidelines", insert "tailored".

1	223	Subsection 97(5)
2		Omit "the guidelines", substitute "tailored guidelines".
3	224	At the end of section 97
4		Add:
5 6		(6) Tailored guidelines made under this section are not a legislative instrument.
7	225	Paragraph 98(1)(a)
8		Repeal the paragraph, substitute:
9 10		(a) prepare a draft public environment report in accordance with the PER guidelines about:
11		(i) the relevant impacts of the action; and
12		(ii) if the PER guidelines are tailored guidelines that require
13		the draft report to include information about other
14		impacts—those other impacts; and
15		(ab) give the draft report to the Minister; and
16	226	Subparagraph 98(1)(c)(ii)
17		After "comments", insert "in writing".
18	227	Subparagraph 98(1)(c)(ii)
19		Omit "invitation; and", substitute "invitation.".
20	228	Paragraph 98(1)(d)
21		Repeal the paragraph.
22	229	Subsection 98(2)
23		Omit all the words after "satisfied", substitute "that the draft report is in
24		accordance with the PER guidelines".
25	230	Sections 99 and 100
26		Reneal the sections, substitute:

1	99 Finalising public environment report
2 3 4	(1) After the end of the period specified in the invitation to comment under section 98, the designated proponent must finalise the draft public environment report.
5 6	(2) The finalised report must:(a) take account of any comments received within the period for comment; and
7 8 9	(b) contain a summary of any such comments and how those comments have been addressed.
10 11 12	(3) As soon as practicable after finalising the draft report, the designated proponent must give the Minister:(a) the finalised report; and(b) either:
13 14 15 16 17	 (i) a copy of any comments received within the period for comment; or (ii) if no comments were received within that period—a written statement to that effect.
18 19 20 21	(4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised report in accordance with the regulations.
22	100 Recommendation report
23 24 25 26 27 28 29	 (1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on: (a) whether the taking of the action should be approved under Part 9; and (b) if approval is recommended, any conditions that should be attached to the approval.
30 31 32 33 34 35	(2) The recommendation report must be given to the Minister after the Minister receives the finalised public environment report under section 99 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action. Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

231	After	section	101
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•	201 711101 00011011 101
2	Insert:
3	101A Minister must give designated proponent written guidelines for preparation of draft environmental impact statement
5 6 7 8	(1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft environmental impact statement about the relevant impacts of the action. The guidelines so given are referred to as the <i>EIS guidelines</i> .
9 10 11 12 13 14 15 16	 (2) The EIS guidelines must be: (a) one or more sets of standard guidelines prepared under section 101B that the Minister decides are appropriate for the preparation of the draft statement in relation to the action; or (b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft statement in relation to the action—tailored guidelines prepared under section 102.
17 18 19 20 21 22 23 24 25	 (3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft statement in relation to the action, the Minister must seek to ensure that the draft statement, if prepared in accordance with those guidelines, will: (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and (b) address the matters (if any) prescribed by the regulations.
26 27 28 29	Note: Similar considerations apply in relation to tailored guidelines: see subsection 102(2). (4) The Minister must give the EIS guidelines to the designated proponent:
30 31 32 33 34 35	 (a) within 20 business days after the assessment approach decision was made under section 87; or (b) if the Minister, under section 102, invites a person to comment on a draft of tailored guidelines for the preparation of the draft statement within a specified period—within 20 business days after:

(i) the end of that period; or

1 2		(ii) if there is more than one such period, the end of the later or latest of those periods.
3	101H	3 Standard guidelines
4		(1) The Minister may prepare one or more sets of standard guidelines,
5 6		in writing, for the preparation of draft environmental impact statements about the relevant impacts of actions.
7		Note: See also subsection 101A(3).
8		(2) A set of standard guidelines must set out requirements for the
9 10		content and presentation of draft environmental impact statements about the relevant impacts of actions.
11 12		(3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:
13		(a) actions that are proposed to be taken by a specified industry
14		sector; or
15 16		(b) actions for which a specified provision of Part 3 is a controlling provision.
17 18		(4) A set of standard guidelines made under this section is not a legislative instrument.
19	232	Subsection 102(1)
20		Repeal the subsection, substitute:
21		(1) The Minister must prepare tailored guidelines, in writing, for the
22		preparation of a draft environmental impact statement about the
23 24		relevant impacts of an action if the Minister decides that standard guidelines are not appropriate for the preparation of the draft
25		statement in relation to that action.
26		(1A) Tailored guidelines must set out requirements for the content and
27		presentation of the draft statement in relation to the action.
28	Note:	The heading to section 102 is replaced by the heading "Tailored guidelines".
29	233	Subsection 102(2)
30		Omit "the guidelines", substitute "tailored guidelines".
31	234	Subsection 102(3)
32		Omit "The guidelines", substitute "Tailored guidelines".

1 2	235	Paragraph 102(4)(b) Before "guidelines", insert "tailored".
3	236	Subsection 102(5)
4		Omit "the guidelines", substitute "tailored guidelines".
5	237	At the end of section 102
6		Add:
7 8		(6) Tailored guidelines made under this section are not a legislative instrument.
9	238	Paragraph 103(1)(a)
10		Repeal the paragraph, substitute:
11		(a) prepare a draft environmental impact statement in accordance
12		with the EIS guidelines about:
13		(i) the relevant impacts of the action; and
14		(ii) if the EIS guidelines are tailored guidelines that require the draft statement to include information about other
15 16		impacts—those other impacts; and
17		(ab) give the draft statement to the Minister; and
18	239	Subparagraph 103(1)(c)(ii)
19		After "comments", insert "in writing".
20	240	Subparagraph 103(1)(c)(ii)
21		Omit "invitation; and", substitute "invitation.".
22	241	Paragraph 103(1)(d)
23		Repeal the paragraph.
24	242	Subsection 103(2)
25		Omit all the words after "satisfied", substitute "that the draft statement
26		is in accordance with the EIS guidelines".
27	243	Sections 104 and 105
28		Repeal the sections, substitute:

1	104 Finalising environmental impact statement
2 3 4	(1) After the end of the period specified in the invitation to comment under section 103, the designated proponent must finalise the draft environmental impact statement.
5 6 7	 (2) The finalised statement must: (a) take account of any comments received within the period for comment; and (b) contain a summary of any such comments and how those
9	comments have been addressed.
10 11 12 13	(3) As soon as practicable after finalising the draft statement, the designated proponent must give the Minister:(a) the finalised statement; and(b) either:
14 15	(i) a copy of any comments received within the period for comment; or
16 17	(ii) if no comments were received within that period—a written statement to that effect.
18 19 20 21	(4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised statement in accordance with the regulations.
22	105 Recommendation report
23 24 25 26 27 28 29	 (1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on: (a) whether the taking of the action should be approved under Part 9; and (b) if approval is recommended, any conditions that should be attached to the approval.
30 31 32 33 34 35	(2) The recommendation report must be given to the Minister after the Minister receives the finalised environmental impact statement under section 104 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action. Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

1	244 Subs	sections 130(1) to (1E)
2	Rep	eal the subsections, substitute:
2		Pasis mile
3		Basic rule
4	(1)	The Minister must decide whether or not to approve, for the
5		purposes of each controlling provision for a controlled action, the
6		taking of the action.
7	(1A)	The Minister must make the decision within the relevant period
8		specified in subsection (1B) that relates to the controlled action, or
9		such longer period as the Minister specifies in writing.
10	(1B)	The <i>relevant period</i> , in relation to a controlled action, is as
11		follows:
12		(a) if the action is the subject of an assessment report—the
13		period of 30 business days beginning on the first business
14		day after the Minister receives the assessment report;
15		(b) if Division 3A of Part 8 (assessment on referral information)
16		applies to the action—the period of 20 business days
17		beginning on the first business day after the Minister receives the finalised recommendation report under subsection 93(5);
18		(c) if Division 4 of Part 8 (assessment on preliminary
19 20		documentation) applies to the action—the period of 40
21		business days beginning on the first business day after the
22		Minister receives the documents under subsection 95B(1) or
23		the statement under subsection 95B(3), as the case requires;
24		(d) if Division 5 (public environment reports) or Division 6
25		(environmental impact statements) of Part 8 applies to the
26		action—the period of 40 business days beginning on the first
27		business day after the Minister receives the finalised public
28		environment report or the finalised environmental impact
29		statement, as the case requires;
30		(e) if a commission has conducted an inquiry relating to the action—the period of 40 business days beginning on the first
31 32		business day after the Minister receives the report of the
33		commission.
34	245 Para	graph 130(2)(c)
35		it "processes); or", substitute "processes).".

1 2	246 Paragraphs 130(2)(d), (e) and (f) Repeal the paragraphs.
3	247 Subsection 130(3) Repeal the subsection.
5 6	248 Subsection 130(4) Omit "paragraph (1)(a) or (b)", substitute "subsection (1A)".
7 8	249 Subsection 130(5) Omit "subsection (1)", substitute "subsection (1B)".
9 10	250 Subsection 131(1) After "approve", insert ", for the purposes of a controlling provision,".
11 12	251 After section 131 Insert:
13 14	131AA Inviting comments before decision from person proposing to take action and designated proponent
115 116 117 118 119 220 221 222 223 224 225 226 227 228	 (1) Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she must: (a) inform the person proposing to take the action, and the designated proponent of the action (if the designated proponent is not the person proposing to take the action), of: (i) the decision the Minister proposes to make; and (ii) if the Minister proposes to approve the taking of the action—any conditions the Minister proposes to attach to the approval; and (b) invite each person informed under paragraph (a) to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.
29 30 31 32	(2) If the Minister proposes not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must provide to each person informed under paragraph (1)(a), with the invitation given under paragraph (1)(b):

1 2		a copy of whichever of the following documents applies to the action:
3		(i) an assessment report;
4 5		(ii) a finalised recommendation report given to the Minister under subsection 93(5);
6 7		(iii) a recommendation report given to the Minister under section 95C, 100 or 105; and
8	(b)	any information relating to economic and social matters that
9		the Minister has considered; and
10		any information relating to the history of a person in relation
11 12		to environmental matters that the Minister has considered under subsection 136(4); and
13	(d)	a copy of any document, or part of a document, containing
14		information of a kind referred to in paragraph 136(2)(e) that
15		the Minister has considered.
16	(3) The N	Ainister is not required to provide under subsection (2):
17	(a)	information that is in the public domain; or
18	(b)	a copy of so much of a document as in the public domain; or
19	(c)	in the case of information referred to in paragraph (2)(b) or
20		(c)—any conclusions or recommendations relating to that
21		information included in documents or other material prepared
22		by the Secretary for the Minister.
23		Ainister must not provide under subsection (2):
24	(a)	a copy of so much of a document as:
25		(i) is an exempt document under the Freedom of
26		Information Act 1982 on the grounds of the security of
27		the Commonwealth or its providing advice to the
28		Minister; or
29 30		(ii) the Minister is satisfied contains information that is commercial-in-confidence; or
31	(b)	information that:
32	,	(i) is of such a nature that its inclusion in a document
33		would cause that document to be an exempt document
34		of the kind referred to in subparagraph (a)(i); or
35		(ii) the Minister is satisfied is commercial-in-confidence.

1 2	(5) The Minister must not be satisfied that information (including information in a document) is commercial-in-confidence unless a
3	person demonstrates to the Minister that:
4 5	(a) release of the information would cause competitive detriment to the person; and
6	(b) the information is not in the public domain; and
7	(c) the information is not required to be disclosed under another
8	law of the Commonwealth, a State or a Territory; and
9	(d) the information is not readily discoverable.
10	(6) In deciding whether or not to approve, for the purposes of a
11	controlling provision, the taking of the action, the Minister must
12 13	take into account any relevant comments given to the Minister in response to an invitation given under paragraph (1)(b).
14	(7) This section is taken to be an exhaustive statement of the
15	requirements of the natural justice hearing rule in relation to:
16	(a) the Minister's decision under section 133 whether or not to
17	approve, for the purposes of a controlling provision, the
18	taking of the action; and
19	(b) if the decision is to approve, for the purposes of a controlling provision, the taking of the action, and the Minister decides,
20 21	under section 134, to attach conditions to the approval—the
22	Minister's decision under section 134 to attach those
23	conditions to the approval.
24	131A Inviting public comment before decision
25	Before the Minister decides whether or not to approve, for the
26	purposes of a controlling provision, the taking of an action, and
27	what conditions (if any) to attach to an approval, he or she may
28	publish on the Internet:
29	(a) the proposed decision and, if the proposed decision is to
30	approve the taking of the action, any conditions that the
31	Minister proposes to attach to the approval; and (b) an invitation for anyone to give the Minister, within 10
32 33	business days (measured in Canberra), comments in writing
34	on the proposed decision and any conditions.
35	252 At the end of section 132
36	Add:

	(1)	16
1	; (d)	
2 3		(i) the action is to be taken in a State or self-governing Territory; and
4		(ii) a controlling provision for the action is in Division 1 of
5		Part 3 (about matters of national environmental
6		significance); and
7 8		(iii) the relevant impacts of the action have been assessed under a law of the State or Territory;
9		the appropriate Minister of that State or Territory;
10	(e)	any other person the Minister considers appropriate.
11	253 After sec	tion 132
12	Insert:	
	11150101	
13	132A Requestin	ng notice from appropriate State or Territory
14		ister about certain actions
15	(1) This	section applies to an action that is to be taken in a State or
16	self-g	governing Territory only if the action:
17	(a)	is to be taken by a person for the purposes of trade or
18		commerce:
19		(i) between Australia and another country; or
20		(ii) between 2 States; or
21		(iii) between a State and a Territory; or
22		(iv) between 2 Territories; or
23	(b)	is to be taken by a constitutional corporation; or
24	(c)	is an action whose regulation is appropriate and adapted to
25		give effect to Australia's obligations under an agreement
26		with one or more other countries.
27 28	Note:	This section also applies in relation to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.
29	(2) How	ever, this section does not apply to an action if:
30	(a)	the action:
31		(i) is a nuclear action; or
32		(ii) is to be taken entirely in a Commonwealth marine area;
33		or
34		(iii) is to be taken entirely on Commonwealth land; or

1	<u> </u>	(iv) is to be taken by the Commonwealth or a
1 2		Commonwealth agency; and
3		(b) the relevant impacts of the action have been assessed under
4		Part 8.
5		(3) Before the Minister (the <i>Environment Minister</i>) decides whether
6		or not to approve for the purposes of a controlling provision the
7		taking of the action, and what conditions (if any) to attach to an
8		approval, the Environment Minister may request the appropriate Minister of the State or Territory to give the Environment Minister
9		a notice stating the method that has been used to assess the certain
1 1 2		and likely impacts of the action on things other than matters protected by the controlling provisions for the action.
13	254	Subsection 133(1)
4		Omit "an assessment report", substitute "the assessment
15		documentation".
16	255	After subsection 133(1)
17		Insert:
18 19 20 21		(1A) If the referral of the proposal to take the action included alternative proposals relating to any of the matters referred to in subsection 72(3), the Minister may approve, for the purposes of subsection (1), one or more of the alternative proposals in relation to the taking of the action.
23	256	Paragraph 133(2)(b)
24 25		After "action", insert "(including any alternative proposals approved under subsection (1A))".
26	257	Paragraph 133(2)(c)
27 28		Omit "who may take the action", substitute "to whom the approval is granted".
29	258	Paragraph 133(2)(f)
80		Omit "any", substitute "the".
31	259	At the end of subsection 133(2)
32		Add:

2		Note: The period for which the approval has effect may be extended. See Division 5.
3	260	After subsection 133(2)
4		Insert:
5		Persons who may take action covered by approval
6 7 8		(2A) An approval granted under this section is an approval of the taking of the action specified in the approval by any of the following persons:
9		(a) the holder of the approval;
10 11 12		(b) a person who is authorised, permitted or requested by the holder of the approval, or by another person with the consent or agreement of the holder of the approval, to take the action.
12		of agreement of the holder of the approval, to take the action.
13	261	Paragraph 133(3)(a)
14 15		After "the person", insert "named in the approval under paragraph 133(2)(c)".
16	262	Subsections 133(5) and (6)
17		Repeal the subsections.
18 19	263	At the end of section 133 Add:
20		Definition
21		(8) In this section:
22 23		assessment documentation, in relation to a controlled action, means:
24		(a) if the action is the subject of an assessment report—that report; or
25 26		(b) if Division 3A of Part 8 (assessment on referral information)
27		applies to the action:
28		(i) the referral of the proposal to take the action; and
29		(ii) the finalised recommendation report relating to the
30		action given to the Minister under subsection 93(5); or
31		(c) if Division 4 of Part 8 (assessment on preliminary
32		documentation) applies to the action:

1 2 3 4		(i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
5		(ii) the recommendation report relating to the action given to the Minister under section 95C; or
7 8		(d) if Division 5 of Part 8 (public environment reports) applies to the action:
9 10		(i) the finalised public environment report relating to the action given to the Minister under section 99; and
11 12		(ii) the recommendation report relating to the action given to the Minister under section 100; or
13 14		(e) if Division 6 of Part 8 (environmental impact statements) applies to the action:
15 16		(i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
17 18		(ii) the recommendation report relating to the action given to the Minister under section 105.
19	264	Before subsection 134(1)
20		Insert:
21 22		Condition to inform persons taking action of conditions attached to approval
23 24 25 26		(1A) An approval of the taking of an action by a person (the <i>first person</i>) is subject to the condition that, if the first person authorises, permits or requests another person to undertake any part of the action, the first person must take all reasonable steps to
27 28 29 30		ensure: (a) that the other person is informed of any condition attached to the approval that restricts or regulates the way in which that part of the action may be taken; and
31 32 33		(b) that the other person complies with any such condition. For the purposes of this Chapter, the condition imposed by this subsection is attached to the approval.
34	Note:	The heading to section 134 is replaced by the heading "Conditions of approval".
35	265	Paragraph 134(1)(a)

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1 2		After "effect", insert "(whether or not the protection is protection from the action)".
3	266	Before paragraph 134(3)(a)
4		Insert:
5		(aa) conditions requiring specified activities to be undertaken for:
6		(i) protecting a matter protected by a provision of Part 3 for
7		which the approval has effect (whether or not the
8		protection is protection from the action); or
9		(ii) repairing or mitigating damage to a matter protected by
10 11		a provision of Part 3 for which the approval has effect (whether or not the damage may or will be, or has been,
12		caused by the action); and
13		(ab) conditions requiring a specified financial contribution to be
14		made to a person for the purpose of supporting activities of a
15		kind mentioned in paragraph (aa); and
16 17	Note:	The heading to subsection 134(3) is replaced by the heading "Examples of kinds of conditions that may be attached".
18	267	Paragraph 134(3)(a)
19		Omit "given by the person", substitute "given by the holder of the
20		approval".
21	268	Subparagraph 134(3)(a)(iii)
22		Omit "the person", substitute "a person".
23	269	Paragraph 134(3)(b)
24		Omit "the person" (first occurring), substitute "the holder of the
25		approval".
26	270	Paragraph 134(3)(b)
27		Omit "the person" (second occurring), substitute "the holder".
28	271	Paragraph 134(3)(c)
29		Omit "the person", substitute "a person".
30	272	Paragraph 134(3)(d)
31		Omit "the person", substitute "any person".
		* *

1	273	After paragraph 134(3)(g)
2		Insert:
3		; and (h) conditions relating to any alternative proposals in relation to
4		the taking of the action covered by the approval (as permitted
5		by subsection 133(1A)).
6	274	After subsection 134(3)
7		Insert:
8		Certain conditions require consent of holder of approval
9		(3A) The following kinds of condition cannot be attached to the
10 11		approval of an action unless the holder of the approval has consented to the attachment of the condition:
12		(a) a condition referred to in paragraph (3)(aa), if the activities
13		specified in the condition are not reasonably related to the
14		action;
15		(b) a condition referred to in paragraph (3)(ab).
16		(3B) If the holder of the approval has given consent, for the purposes of
17		subsection (3A), to the attachment of a condition:
18 19		(a) the holder cannot withdraw that consent after the condition has been attached to the approval; and
20		(b) any person to whom the approval is later transferred under
21		section 145B is taken to have consented to the attachment of
22		the condition, and cannot withdraw that consent.
23		Conditions attached under paragraph (3)(c)
24		(3C) A condition attached to an approval under paragraph (3)(c) may
25		require a person taking the action to comply with conditions
26		specified in an instrument of a kind referred to in that paragraph:
27		(a) as in force at a particular time; or
28		(b) as is in force or existing from time to time;
29		even if the instrument does not yet exist at the time the approval
30		takes effect.
31	275	Paragraph 134(4)(a)
32		After "imposed", insert ", or the Minister considers are likely to be
33		imposed,".

1	276 Paragraph 134(4)(b)
2	Omit "the person", substitute "a person".
3	277 After subsection 134(4)
4	Insert:
5 6	Effect of conditions requiring compliance with conditions specified in another instrument
7	(4A) If:
8 9 10 11 12	 (a) a condition (the <i>principal condition</i>) attached to an approval under paragraph (3)(c) requires a person taking the action to comply with conditions (the <i>other conditions</i>) specified in a instrument of a kind referred to in that paragraph; and (b) the other conditions are in excess of the power conferred by subsection (1);
14 15	the principal condition is taken to require the person to comply with the other conditions only to the extent that they are not in excess of that power.
17	278 At the end of Subdivision A of Division 1 of Part 9
18	Add:
19	135A Publication of recommendation reports
20 21 22 23 24	 (1) This section applies in relation to the following reports: (a) a finalised recommendation report given to the Minister under subsection 93(5); (b) a recommendation report given to the Minister under section 95C, 100 or 105.
25 26 27 28	(2) Subject to subsections (3) and (4), the Secretary must provide a copy of a report to which this section applies to a person who ask for it (either at no charge or at a reasonable charge determined by the Secretary).
29 30 31	(3) The Secretary is not required to provide a copy of the report unde subsection (2) to anyone until after the Minister has decided, for the purposes of each controlling provision, whether or not to approve the taking of the action concerned.

1 2		(4) The Secretary may refuse to provide, under subsection (2), a copy of so much of the report as:
3		(a) is an exempt document under the Freedom of Information Act
4		1982 on the grounds of the security of the Commonwealth or its providing advice to the Minister; or
5		· · · · · · · · · · · · · · · · · · ·
6		(b) the Secretary is satisfied is commercial-in-confidence.
7		(5) The Secretary must not be satisfied that a part of the report is
8		commercial-in-confidence unless a person demonstrates to the
9		Secretary that:
0		(a) release of the information in that part would cause
1		competitive detriment to the person; and
12		(b) the information in that part is not in the public domain; and
13		(c) the information in that part is not required to be disclosed
4		under another law of the Commonwealth, a State or a
15		Territory; and
6		(d) the information in that part is not readily discoverable.
17	279	Paragraph 136(2)(b)
18		After "assessment report", insert "(if any)".
	000	A ((a v v a v a v v a v b v A 0 C (0) / b)
19	280	After paragraph 136(2)(b)
20		Insert:
21		(ba) if Division 3A of Part 8 (assessment on referral information)
22		applies to the action—the finalised recommendation report
23		relating to the action given to the Minister under subsection
24		93(5); and
25		(bc) if Division 4 of Part 8 (assessment on preliminary
26		documentation) applies to the action:
27		(i) the documents given to the Minister under subsection
28		95B(1), or the statement given to the Minister under
29		subsection 95B(3), as the case requires, relating to the
80		action; and
31		(ii) the recommendation report relating to the action given
32		to the Minister under section 95C; and
33	281	Paragraph 136(2)(c)
34		Repeal the paragraph, substitute:
34 35		Repeal the paragraph, substitute: (c) if Division 5 (public environment reports) of Part 8 applies to

1 2		(i) the finalised public environment report relating to the action given to the Minister under section 99; and
3 4		(ii) the recommendation report relating to the action given to the Minister under section 100; and
5 6		(ca) if Division 6 (environmental impact statements) of Part 8 applies to the action:
7 8 9		 (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and (ii) the recommendation report relating to the action given to the Minister under section 105; and
11 12	282	Paragraph 136(2)(f) Omit "by another Minister".
13 14	283	At the end of paragraph 136(2)(f) Add "or 131A".
15 16 17 18 19 20 21	284	At the end of subsection 136(2) Add: ; and (g) if a notice relating to the action was given to the Minister under subsection 132A(3)—the information in the notice. Note: The Minister must also take into account any relevant comments given to the Minister in response to an invitation under paragraph 131AA(1)(b). See subsection 131AA(6).
22 23 24	285	Subsection 136(4) Omit all the words after "an approval," (second occurring), substitute: having regard to:
25 26 27 28 29 30 31		 (a) the person's history in relation to environmental matters; and (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and (c) if the person is a body corporate that is a subsidiary of another body or company (the <i>parent body</i>)—the history in relation to environmental matters of the parent body and its executive officers.
32	286	Subsection 136(5)
33		Omit "Subdivision", substitute "Division".

1	287	Section 139
2		Before "In deciding", insert "(1)".
3	288	At the end of section 139
4		Add:
5		(2) If:
6		(a) the Minister is considering whether to approve, for the
7 8		purposes of a subsection of section 18 or section 18A, the taking of an action; and
9		(b) the action has or will have, or is likely to have, a significant
10		impact on a particular listed threatened species or a particular listed threatened ecological community;
12		the Minister must, in deciding whether to so approve the taking of
13		the action, have regard to any approved conservation advice for the
4		species or community.
15	289	After subsection 142(1)
16		Insert:
17		(1A) Subsection (1) does not apply to a person who is not the holder of
8		the approval if:
9		(a) the person was not informed of the condition; and
20		(b) the person could not reasonably have been expected to be aware of the condition.
21		
22 23		Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the <i>Criminal Code</i> .
24	290	At the end of subsection 142A(4)
25		Add:
26 27		Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.
28	291	At the end of Division 2 of Part 9
29		Add:
80	142F	Strict liability offence for breach of approval condition
21		(1) A person whose taking of an action has been approved under this
31 32		Part is guilty of an offence if:
		- O - V

1	(a) the	e person takes an action or omits to take an action; and
2	(b) the	e action or omission contravenes a condition attached to the
3	ap	proval.
4	Penalty:	60 penalty units.
5 6	Note 1:	Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.
7 8 9	Note 2:	Subsection 4B(3) of the <i>Crimes Act 1914</i> lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.
10 11 12	Note 3:	An executive officer of a body corporate convicted of an offence against this section may also be guilty of an offence against section 495.
13 14	Note 4:	If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.
15	(2) Subsecti	ion (1) does not apply to a person who is not the holder of
16	the appr	oval if:
17	(a) the	e person was not informed of the condition; and
18 19		e person could not reasonably have been expected to be vare of the condition.
20 21	Note:	The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the <i>Criminal Code</i> .
22	(3) Subsecti	on (1) is an offence of strict liability.
23	Note:	For strict liability, see section 6.1 of the Criminal Code.
24	292 Subsection	143(1)
25 26	After "any co subsection 13	onditions", insert "(other than the condition referred to in 34(1A))".
27	293 After paragi	raph 143(1)(b)
28	Insert:	
29	(ba) all	of the following conditions are satisfied:
30		i) the action has had a significant impact on a matter
31		protected by a provision of Part 3 for which the
32 33		approval has effect, or the Minister believes the action will have such an impact;
34	(i	i) the Minister is satisfied that the impact is substantially
35	(1	greater than the impact that was identified in assessing
36		the action;

1 2		(iii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or
3	294	Paragraph 143(1)(c)
4 5		Omit "the person whose taking of the action was approved", substitute "the holder of the approval".
6	295	Paragraph 143(1)(c)
7 8 9		After "or addition" (first occurring), insert ", or the Minister has extended the period for which the approval has effect under section 145D,".
0	296	Subsection 143(2)
1 2		After "any condition", insert "(other than the condition referred to in subsection 134(1A))".
13	297	Subsection 143(3)
4		Omit all the words after "the Minister may", substitute:
15		have regard to:
6		(a) the person's history in relation to environmental matters; and
17 18		(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
9		(c) if the person is a body corporate that is a subsidiary of
20		another body or company (the <i>parent body</i>)—the history in
21 22		relation to environmental matters of the parent body and its executive officers.
23	298	Paragraph 143(5)(a)
24		Omit "the person to whose action the approval relates", substitute "the
25		holder of the approval".
26	299	Subsection 143(5) (note)
27		Omit "the person", substitute "the holder".
28	300	Subsection 143(5) (note)
29		Omit "the person's", substitute "the holder's".
	201	After subsection 144(2)

1		Insert:
2		(2A) The Minister may, by written instrument, suspend the effect of an
3		approval under this Part for the purposes of a specified provision of
4		Part 3 for a specified period (which must not start before the day
5		on which the instrument is made) if:
6		(a) either:
7		(i) the Minister believes on reasonable grounds that there
8		has been a contravention of a condition attached to the
9		approval; or
10		(ii) if a condition attached to the approval is to the effect
11		that the approval is subject to a thing being done within
12		a particular time—the Minister believes on reasonable
13		grounds that the thing has not been done within that
14		time; and
15		(b) the Minister is satisfied that:
16		(i) the approval would not have been granted without that
17		condition being attached; or
18		(ii) because of the failure to comply with the requirement,
19		the suspension is reasonably necessary to protect a matter protected by a provision of Part 3 for which the
20 21		approval has effect.
22	302	Subsection 144(3)
		Omit all the words after "the Minister may", substitute:
23		Office and the words after the Minister may, substitute.
24		have regard to:
25		(a) the person's history in relation to environmental matters; and
26		(b) if the person is a body corporate—the history of its executive
27		officers in relation to environmental matters; and
28		(c) if the person is a body corporate that is a subsidiary of
29		another body or company (the <i>parent body</i>)—the history in
30		relation to environmental matters of the parent body and its
31		executive officers.
32	303	Paragraph 144(5)(a)
33		Omit "the person to whose action the approval relates", substitute "the
34		holder of the approval".
35	304	After subsection 145(2A)

1		Insert:
2		(2B) The Minister may, by written instrument, revoke an approval under
3		this Part for the purposes of a specified provision of Part 3 if:
4		(a) either:
5		(i) the Minister believes on reasonable grounds that there
6		has been a contravention of a condition attached to the
7		approval; or
8		(ii) if a condition attached to the approval is to the effect
9		that the approval is subject to a thing being done within
10		a particular time—the Minister believes on reasonable
1 2		grounds that the thing has not been done within that time; and
		(b) the Minister is satisfied that:
13		
4		(i) the approval would not have been granted without that condition being attached; or
15		(ii) because of the failure to comply with the requirement,
16 17		the revocation is reasonably necessary to protect a
18		matter protected by a provision of Part 3 for which the
9		approval has effect.
20	305	Subsection 145(3)
21		Omit all the words after "the Minister may", substitute:
10		have regard to
22		have regard to:
23		(a) the person's history in relation to environmental matters; and
24 25		(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
26		(c) if the person is a body corporate that is a subsidiary of
27		another body or company (the <i>parent body</i>)—the history in
28		relation to environmental matters of the parent body and its
29		executive officers.
80	306	Paragraph 145(5)(a)
31		Omit "the person to whose action the approval related", substitute "the
32		person who was the holder of the approval".
33	307	Subsection 145A(2)
34		After "the person", insert "who was the holder of the approval".
		Transfer of the control of the contr

1	308	Paragraph 145A(5)(a)
2		After "the person", insert "who was the holder of the approval".
3	309	Subsection 145A(6)
4		After "the person", insert "who was the holder of the approval".
5	310	Subsection 145A(8)(a)
6		After "the person", insert "who was the holder of the approval".
7	311	Subsection 145B(1)
8 9		Omit "whose taking of an action has been approved", substitute "who is the holder of an approval".
10	312	Paragraph 145B(4)(a)
11		Repeal the paragraph, substitute:
12		(a) whether the transferee would be a suitable person to be
13		granted the approval, having regard to:
14		(i) the transferee's history in relation to environmental
15		matters; and
16 17 18		(ii) if the transferee is a body corporate—the history of its executive officers in relation to environmental matters; and
19		(iii) if the transferee is a body corporate that is a subsidiary
20 21		of another body or company (the <i>parent body</i>)—the history in relation to environmental matters of the parent
22		body and its executive officers; and
23	313	At the end of Part 9
24		Add:
25	Div	ision 5—Extension of period of effect of approval
26	1450	C Application to Minister to extend period of effect of approval
27		(1) Subject to subsection (2), the holder of an approval under this Part
28		may apply, in writing, to the Minister to extend the period (the
29		approval period) for which the approval has effect.
30		(2) Subsection (1) does not apply if:

1 2		(a) the approval has been suspended or revoked under this Part and has not been reinstated; or
3		(b) the approval has otherwise ceased to have effect.
4 5	((3) An application under subsection (1) must include the information (if any) prescribed by the regulations.
6 7	145D M	Iinister must decide whether or not to extend approval period
8 9 10	((1) Within 20 business days after receiving an application under subsection 145C(1), the Minister must decide, in writing, whether or not to extend the approval period.
11 12		Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 145E.
13 14 15 16	((2) The Minister may decide to extend the approval period only if the Minister is satisfied that the extension will not result in a substantial increase in, or substantial change in the nature of, the adverse impacts (if any) the action:
17 18		(a) has or will have; or(b) is likely to have;
19 20		on the matter protected by each provision of Part 3 for which the approval has effect.
21 22 23	((3) In considering the matter referred to in subsection (2), the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Division:
242526		(a) matters relevant to any matter protected by a provision of Part 3 for which the approval has effect;(b) economic and social matters.
27 28	((4) As soon as possible after deciding whether or not to extend the approval period, the Minister must:
29		(a) give a copy of the decision to the holder of the approval; and
30		(b) if the decision is to extend the approval period—publish the
31		decision in accordance with the regulations.
32	145E M	Iinister may request further information for making decision
33	((1) If the Minister believes on reasonable grounds that he or she does
34		not have enough information to decide whether or not to extend the

1 2 3	approval period, the Minister may request the holder of the approval to provide specified information relevant to making the decision.
4 5	(2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the
6	purposes of subsection 145D(1) if it is:
7 8	(a) on or after the day the Minister requested the information; and
9 10	(b) on or before the day on which the Minister receives the last of the information requested.
11	314 Before section 146
12	Insert:
13	Subdivision A—Assessment of actions to be taken in
14	accordance with policy, plan or program
15	315 After subsection 146(1A)
16	Insert:
17	(1B) The agreement must provide for:
18	(a) the preparation of terms of reference for a report on the
19	impacts to which the agreement relates; or
20	(b) all of the following:
21 22	(i) the preparation of draft terms of reference for a report on the impacts to which the agreement relates;
23	(ii) the publication of the draft terms of reference for public
24	comment for a period of at least 28 days that is specified
25	by the Minister;
26	(iii) the finalisation of the terms of reference, to the
27 28	Minister's satisfaction, taking into account the comments (if any) received on the draft terms of
29	reference.
30	316 Paragraphs 146(2)(aa) to (ac)
31	Repeal the paragraphs.
32	317 Subsection 146(2) (note 2)
33	Repeal the note, substitute:
33	Repeat the note, substitute.

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1 2 3 4 5 6	manage may de that act arrange	Minister endorses a policy, plan or program embodied in a ment arrangement or an authorisation process, the Minister clare under section 33, or make a bilateral agreement declaring, ions approved in accordance with the management ment or authorisation process do not need approval for the es of a specified provision of Part 3.
7	318 At the end of Divi	sion 1 of Part 10
8	Add:	
9 10		val of taking of actions in accordance ed policy, plan or program
11	146A Definition	
12	In this Subdivis	ion and Subdivision C:
13 14 15	that has been en	e, <i>plan or program</i> means a policy, plan or program dorsed by the Minister in accordance with an entioned in paragraph 146(2)(f).
16 17	·	cove taking of actions in accordance with cy, plan or program
18 19 20		ivision C, the Minister may approve the taking of ass of actions in accordance with an endorsed program.
21 22 23	in decid	ision C sets out matters that the Minister must take into account ling whether or not to approve the taking of an action or a class ins in accordance with an endorsed policy, plan or program.
24 25		the taking of an action or a class of actions in an endorsed policy, plan or program must:
26	(a) be in writ	ing; and
27		e action or class of actions that may be taken in
28		e with the endorsed policy, plan or program; and
29		ch provision of Part 3 for which the approval has
30	effect; and	
31		e period for which the approval has effect; and conditions attached to the approval.
32	(e) set out the	conditions attached to the approval.
33		the taking of an action or a class of actions in
34	accordance with	an endorsed policy, plan or program may specify

2	the person or persons who may take the action or an action in the class of actions.
3	(3) The Minister must:
4	(a) give a copy of the approval to the person responsible for the
5	adoption or implementation of the endorsed policy, plan or
6	program; and
7	(b) provide a copy of the approval to a person who asks for it
8 9	(either at no charge or for a reasonable charge determined by the Minister).
10 11	(4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
12	(a) is an exempt document under the <i>Freedom of Information A</i>
13	1982 on the grounds of commercial confidence; or
14	(b) the Minister believes it is in the national interest not to
15	provide.
16	The Minister may consider the defence or security of the
17	Commonwealth when determining what is in the national interest.
18	This does not limit the matters the Minister may consider.
19	(5) An approval given under subsection (1) is not a legislative
20	instrument.
21	146C Inviting comments from other Ministers before deciding
22	whether or not to approve taking of actions in accordance
23	with endorsed policy, plan or program
24	(1) Before the Minister (the <i>Environment Minister</i>) decides whether
25	or not to approve the taking of an action or a class of actions in
26	accordance with an endorsed policy, plan or program, he or she
27	must:
28 29	(a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the
29 30	action or class of actions of the decision the Environment
31	Minister proposes to make; and
32	(b) invite each Minister informed to give the Environment
33	Minister, within 10 business days, comments on the propose
34	decision.
35	(2) A Minister who is invited to comment may make comments:

1 2	(a) that relate to economic and social matters relating to the action or class of actions to which the proposed decision
3	relates; and
4	(b) that may be considered by the Environment Minister
5	consistently with the principles of ecologically sustainable
6	development.
7	This does not limit the comments such a Minister may give.
8	146D Effect of approval of taking of actions in accordance with
9	endorsed policy, plan or program
10 11	(1) If an approval under section 146B is in force, the following provisions have effect:
12 13	(a) the Minister is taken to have decided under Division 2 of Part 7 that:
14	(i) each action specified in the approval under paragraph
15	146B(2)(b), or each action in a class of actions specified
16	in the approval under that paragraph, is a controlled
17	action; and
18	(ii) each provision of Part 3 specified in the approval under
19	paragraph 146B(2)(c) is a controlling provision for each
20	such controlled action;
21	(b) the Minister is taken to have approved under Part 9, for the
22	purposes of each controlling provision for each controlled
23	action, the taking of the action by any of the following:
24	(i) the person or persons (if any) specified in the approval
25	under subsection 146B(2A) as the person or persons
26	who may take the action;
27	(ii) any other person who may take the action in accordance
28	with the endorsed policy, plan or program.
29	(2) Parts 7 and 8 and paragraph 170A(c) do not apply in relation to an
30	action if an approval of the taking of the action, or an approval of
31	the taking of a class of actions that includes the action, in
32	accordance with an endorsed policy, plan or program is in force
33	under section 146B.
34	(3) Subject to subsection (4), section 134 and Divisions 2, 3 and 4 of
35	Part 9 apply in relation to an approval of the taking of an action
36	that is taken to have been given under Part 9 because of
37	paragraph (1)(b).

1 2 3 4	Note: Section 134 deals with conditions of approvals, Division 2 of Part 9 deals with compliance with conditions, Division 3 of Part 9 deals with variation of conditions and suspension and revocation of approvals and Division 4 of Part 9 deals with transfer of approvals.
5	(4) Subsection 145A(4) applies in relation to a decision whether or not
6	to reinstate an approval of the taking of an action that is taken to
7	have been given under Part 9 because of paragraph (1)(b), as if:
8	(a) the reference to Subdivision B of Division 1 of Part 9 were a
9	reference to Subdivision C of this Division; and
10	(b) the reference to a decision whether or not to approve the
11	taking of an action were a reference to a decision whether or
12 13	not to approve, under this Subdivision, the taking of an action in accordance with an endorsed policy, plan or program.
14	Subdivision C—Considerations for approving taking of actions
15	in accordance with endorsed policy, plan or program
16	146E Minister must comply with this Subdivision
17	The Minister must comply with this Subdivision in deciding:
18 19 20	(a) whether or not to approve, under section 146B, the taking of an action or a class of actions in accordance with an endorsed policy, plan or program; and
21 22 23	(b) in the case of a decision to approve the taking of such an action or class of actions, what conditions (if any) to attach to the approval.
24 25	Note: For the meaning of <i>endorsed policy</i> , <i>plan or program</i> , see section 146A.
26	146F General considerations
27	(1) The Minister must consider the following, so far as they are not
28	inconsistent with any other requirements of this Subdivision:
29	(a) matters relevant to any matter protected by a provision of
30	Part 3 that the Minister considers is relevant to the approval;
31	(b) economic and social matters.
32	(2) In considering those matters, the Minister must take into account
33	the principles of ecologically sustainable development.

1	146G	Approvals relating to declared World Heritage properties
2		If the approval relates to a declared World Heritage property, the
3		Minister must not act inconsistently with:
4 5		(a) Australia's obligations under the World Heritage Convention; or
6		(b) the Australian World Heritage management principles; or
7		(c) a plan that has been prepared for the management of the
8 9		declared World Heritage property under section 316 or as described in section 321.
10	146H	Approvals relating to National Heritage places
11 12		If the approval relates to a National Heritage place, the Minister must not act inconsistently with:
13		(a) the National Heritage management principles; or
14 15		(b) an agreement to which the Commonwealth is party in relation to the National Heritage place; or
16		(c) a plan that has been prepared for the management of the
17 18		National Heritage place under section 324S or as described in section 324X.
19	146J	Approvals relating to declared Ramsar wetlands
20		If the approval relates to a declared Ramsar wetland, the Minister
21		must not act inconsistently with Australia's obligations under the
22		Ramsar Convention.
23	146K	Approvals relating to listed threatened species and ecological
24		communities
25		(1) This section applies if the approval relates to a listed threatened
26		species or a listed threatened ecological community.
27		(2) The Minister must not act inconsistently with:
28		(a) Australia's obligations under:
29		(i) the Biodiversity Convention; or
30		(ii) the Apia Convention; or
31		(iii) CITES; or
32		(b) a recovery plan for the species or community or a threat
33		abatement plan.

1 2	(3) The Minister must have regard to any approved conservation advice for the species or community.
3	146L Approvals relating to listed migratory species
4	If the approval relates to a listed migratory species, the Minister
5 6	must not act inconsistently with whichever of the following conventions or agreements because of which the species is listed:
7	(a) the Bonn Convention;
8	(b) CAMBA;
9	(c) JAMBA;
10 11	(d) an international agreement approved under subsection 209(4).
12	146M No approvals relating to nuclear actions
13	The Minister must not approve the taking of an action or a class of
14	actions in accordance with an endorsed policy, plan or program if
15	the action, or an action in the class of actions, consists of, or
16 17	involves the construction or operation of, any of the following nuclear installations:
18	(a) a nuclear fuel fabrication plant;
19	(b) a nuclear power plant;
20	(c) an enrichment plant;
21	(d) a reprocessing facility.
22	319 Subsection 152(2)
23	Omit all the words after "managing the fishery".
24	320 Section 153
25	Repeal the section, substitute:
26	153 Minister must make declaration if he or she endorses plan or
27	policy
28	(1) This section applies if:
29	(a) the Minister makes an agreement under section 146 as
30	required by this Division and endorses under the agreement:
31	(i) a plan of management under the Fisheries Management
32	Act 1991 for a fishery; or

1	(ii) policies of the Australian Fisheries Management
2	Authority for managing a fishery for which there is not
3	a plan of management under the <i>Fisheries Management Act 1991</i> ; or
	(iii) a plan of management under the <i>Torres Strait Fisheries</i>
5 6	Act 1984 for a fishery; or
7	(iv) policies for managing fishing under the <i>Torres Strait</i>
8	Fisheries Act 1984; and
9	(b) the Minister accredits, under subsection 33(3) of this Act, as an accredited arrangement a management plan or regime
10 11	consisting of the endorsed plan or policies.
12	(2) The Minister must make a declaration under section 33 that actions
13	approved in accordance with the accredited arrangement do not
14 15	require an approval under Part 9 for the purposes of subsection 23(1), (2) or (3) or subsection 24A(1), (2), (3), (4), (5) or (6).
	Note: The declaration and accreditation will allow actions that would
16 17	otherwise be prohibited by sections 23 and 24A to be taken without
18	approval if they are taken in accordance with the accredited
19	arrangement. See section 32.
20	321 After Division 1 of Part 11
21	Insert:
	Division 1A Variation of proposals to take actions
22	Division 1A—Variation of proposals to take actions
23	156A Request to vary proposal to take an action
24	(1) If:
25	(a) a proposal (the <i>original proposal</i>) by a person to take an
26	action has been referred to the Minister under Division 1 of
27	Part 7; and
28 29	(b) after the referral is made, the person wishes to change the original proposal;
30	the person may, subject to subsection (2), request the Minister to
31	accept a variation (a varied proposal) of the original proposal.
32	(2) Subsection (1) does not apply if:
33	(a) the Minister has made a decision under section 74A to not
34	accept the referral of the original proposal; or

2	(b) the Minister has made a decision under section 75 that the proposed action is not a controlled action; or
3	(c) a particular manner for taking the proposed action is identified under subsection 77A(1) in the notice given under
4 5	section 77 in relation to the action; or
6	(d) the Minister has made a decision under section 133
7	approving or refusing to approve the taking of the proposed
8	action; or
9	(e) the referral of the original proposal has been withdrawn
10	under section 170C.
11	(3) A request under subsection (1) must:
12	(a) be made in a way prescribed by the regulations; and
13	(b) include the information prescribed by the regulations.
14	(4) If a request is made under subsection (1), any provisions of this
15	Chapter that would, apart from this subsection, have applied in
16	relation to the original proposal cease to apply to that proposal.
17	Note: Provisions that have ceased to apply in relation to the original
18 19	proposal under subsection (4) will start to apply to that proposal, or the varied proposal, after the Minister has decided whether or not to
20	accept the varied proposal. See section 156D.
21	156B Minister must decide whether or not to accept a varied
Z I	
22	proposal proposal
22 23	-
	proposal(1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister
23	proposal(1) Within 20 business days after receiving a request under subsection
23 24	proposal(1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister
23 24 25 26	proposal (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal. Note: The Minister may request further information for the purpose of
23 24 25 26 27	proposal (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal. Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C. (2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is
23 24 25 26 27 28 29 30	proposal (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal. Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C. (2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal.
23 24 25 26 27 28 29 30 31	proposal (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal. Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C. (2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. This subsection does not limit the matters the Minister may
23 24 25 26 27 28 29 30	proposal (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal. Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C. (2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal.
23 24 25 26 27 28 29 30 31	proposal (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal. Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C. (2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. This subsection does not limit the matters the Minister may
23 24 25 26 27 28 29 30 31 32	 (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal. Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C. (2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. This subsection does not limit the matters the Minister may consider in deciding whether or not to accept the varied proposal. (3) In considering, for the purposes of subsection (2), whether or not the character of the varied proposal is substantially the same as the
23 24 25 26 27 28 29 30 31 32	 (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal. Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C. (2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. This subsection does not limit the matters the Minister may consider in deciding whether or not to accept the varied proposal. (3) In considering, for the purposes of subsection (2), whether or not the character of the original proposal, is substantially the same as the character of the original proposal, the Minister must have regard
23 24 25 26 27 28 29 30 31 32 33 34	 (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal. Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C. (2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. This subsection does not limit the matters the Minister may consider in deciding whether or not to accept the varied proposal. (3) In considering, for the purposes of subsection (2), whether or not the character of the varied proposal is substantially the same as the

1 2	(a) the nature of the activities proposed to be carried out in taking the action; and
3	(b) the nature and extent of the impacts (if any) the action:
4	(i) has or will have; or
5	(ii) is likely to have;
6	on the matter protected by each provision of Part 3.
7	156C Minister may request further information in relation to a
8	varied proposal
9	(1) If the Minister believes on reasonable grounds that a request under
10	subsection 156A(1) to accept a varied proposal to take an action
11	does not include enough information for the Minister to decide
12	whether or not to accept the varied proposal, the Minister may
13 14	request the person proposing to take the action to provide specified information relevant to making the decision.
15	(2) If the Minister has requested more information under
15 16	subsection (1), a day is not to be counted as a business day for the
17	purposes of subsection 156B(1) if it is:
18	(a) on or after the day the Minister requested the information;
19	and
20	(b) on or before the day on which the Minister receives the last
21	of the information requested.
22	156D Effect of Minister's decision to accept or not accept a varied
23	proposal
24	(1) If the Minister decides to accept a varied proposal to take an
25	action:
26	(a) any provisions of this Chapter that, because of subsection
27	156A(4), have ceased to apply in relation to the original
28	proposal start to apply in relation to the varied proposal; and
29	(b) for the purpose of the application of those provisions,
30 31	anything done in relation to the original proposal is taken to have been done in relation to the varied proposal.
31	have been done in relation to the varied proposal.
32	(2) If the Minister decides not to accept a varied proposal to take an
33	action, any provisions of this Chapter that, because of subsection
34	156A(4), have ceased to apply in relation to the original proposal
35	start to apply in relation to that proposal.

1 2 3 4 5 6 7 8	 (3) For the purpose of the application of the provisions of this Chapte in relation to the varied proposal under subsection (1), or in relation to the original proposal under subsection (2), a day is not to be counted as a business day if it is: (a) on or after the day the Minister received the request under subsection 156A(1) to accept the varied proposal; and (b) on or before the day the Minister made the decision under subsection 156B(1).
9	156E Notice of decision
10	(1) Within 10 business days after deciding under subsection 156B(1)
11	whether or not to accept a varied proposal to take an action, the
12	Minister must give written notice of the decision to:
13	(a) the person proposing to take the action; and
14 15	(b) the designated proponent of the action (if the designated proponent of the action is not the person proposing to take
16	the action).
17	(2) If:
18	(a) the request to accept the varied proposal related to an action
19	that is to be taken in a State or self-governing Territory; and
20	(b) a controlling provision for the action is in Division 1 of
21	Part 3 (which deals with matters of national environmental
22	significance); and
23	(c) the Minister decided to accept the varied proposal;
24	the Minister must also, within the period referred to in
25 26	subsection (1), give written notice of the decision to the appropriate Minister of the State or Territory.
27	(3) If the Minister decided to accept the varied proposal, the Minister
28	must, within the period referred to in subsection (1), publish the
29	request to accept the varied proposal and notice of the decision in
30	accordance with the regulations.

Division 1B—Change of person proposing to take action

2	156F Change of person proposing to take action
3	Notice of change of person proposing to take action
4	(1) At any time:
5 6	(a) after a proposal by a person to take an action has been referred to the Minister under Division 1 of Part 7; and
7 8	(b) before the Minister has approved, or refused to approve, the taking of the action under section 133;
9	the person (the <i>first person</i>) proposing to take the action and
10 11	another person (the <i>second person</i>) may notify the Minister, in writing, that:
12	(c) the first person no longer proposes to take the action; and
13	(d) the second person proposes to take the action instead.
14 15	Note: A person who is the holder of an approval under Part 9 may transfer the approval to another person under section 145B.
16	When notice cannot be given
17	(2) Subsection (1) does not apply if:
18	(a) the Minister has made a decision under section 74A to not accept the referral of the proposal to take the action; or
19	(b) the Minister has made a decision under section 75 that the
20 21	action is not a controlled action; or
22	(c) a particular manner for taking the action is identified under
23	subsection 77A(1) in the notice given under section 77 in
24	relation to the action.
25	Notice must include prescribed information
26	(3) A notice under subsection (1) must include the information
27	(if any) prescribed by the regulations.
28	Effect of notice
29	(4) If a notice is given to the Minister under subsection (1):
30	(a) any provisions of this Chapter that, apart from this paragraph,
31	would have applied to the first person in relation to the action
32	cease to apply to that person and start to apply to the second
33	person; and

1	(b) for the purposes of the application of those provisions:
2	(i) the second person is taken to be named in the referral of
3	the proposal to take the action as the person proposing
4	to take the action; and
5 6	(ii) the second person is taken to have done anything the first person did in relation to the action; and
7	(iii) anything done in relation to the first person in relation to
8	the action is taken to have been done in relation to the
9	second person.
10	Publication of notice
11 12 13	(5) Within 10 business days after receiving a notice under subsection (1), the Minister must publish a copy of the notice in accordance with the regulations.
14	322 After Division 3 of Part 11
15	Insert:
16 17 18	Division 3A—Approval process decisions not affected by listing events that happen after section 75 decision made
19 20	158A Approval process decisions not affected by listing events that happen after section 75 decision made
21	(1) In this section:
22	approval process decision means any of the following decisions:
23	(a) a decision under section 75 whether an action is a controlled
24	action;
25	(b) a decision under section 75 whether a provision of Part 3 is a
26	controlling provision for an action;
27	(c) a decision under section 78 in relation to a decision referred
28	to in paragraph (a) or (b) of this definition;
29	(d) a decision under section 87 on the approach for the
30	assessment of the impacts of an action;
31	(e) a decision under section 133 whether to approve an action;
32	(f) a decision under section 134 to attach conditions to an
	1 0
33	approval of an action;

1 2	(g)	a decision under section 143 to revoke, vary or add to conditions attached to an approval of an action;
3	(h)	any other decision made under a provision of this Chapter
4		that is specified in the regulations.
5	listin	g event means any of the following events:
6	(a)	a property becoming a declared World Heritage property;
7	(b)	a change in the world heritage values of a declared World
8		Heritage property;
9		a place becoming a National Heritage place;
10	(d)	a change in the National Heritage values included in the
11		National Heritage List for a National Heritage place;
12	(e)	a place becoming a Commonwealth Heritage place;
13	(f)	a change in the Commonwealth Heritage values included in
14		the Commonwealth Heritage List for a Commonwealth
15		Heritage place;
16		a wetland becoming a declared Ramsar wetland;
17	(h)	a change in the boundaries of any of the following:
18		(i) a World Heritage property;
19		(ii) a National Heritage place;
20		(iii) a Commonwealth Heritage place;
21		(iv) a declared Ramsar wetland;
22	(i)	a species becoming a listed threatened species;
23	(j)	an ecological community becoming a listed threatened
24		ecological community;
25	(k)	a listed threatened species or a listed threatened ecological
26		community becoming listed in another category representing
27		a higher degree of endangerment;
28	(1)	a species becoming a listed migratory species;
29	(m)	any other event of a kind specified in the regulations.
30	(2) This	section applies if:
31	(a)	the Minister has, before or after the commencement of this
32		section, decided under section 75 (the <i>primary decision</i>)
33		whether an action (the <i>relevant action</i>) is a controlled action
34		(whether the decision is that the action is a controlled action,
35	/1 \	or that the action is not a controlled action); and
36	(b)	at a time that is after the commencement of this section and
37		after the primary decision was made, a listing event occurs.

1 2 3 4 5 6	(3) The validity of the primary decision, or any other approval process decision made in relation to the relevant action before the listing event occurred, is not affected by the listing event, nor can it be revoked, varied, suspended, challenged, reviewed, set aside or called in question because of, or for reasons relating to, the listing event.
7	(4) After the listing event occurs, the listing event is to be disregarded:
8	(a) in making any further approval process decision in relation to the relevant action; and
10	(b) in doing anything under this Chapter, in relation to the
11	relevant action, because of the making of an approval process
12	decision in relation to the relevant action (whether that
13 14	approval process decision is or was made before or after the listing event occurred).
15 16	(5) This section has effect despite any other provision of this Act and despite any other law.
17	323 After paragraph 159(a) (second occurring)
18	Insert:
19	(aa) an assessment on referral information under
20	Division 3A;
21	324 After subsection 160(1)
	Insert:
22	iliseit.
23	Minister may decide advice is not required
24 25	(1A) Subsection (1) does not apply in relation to an authorisation of an action if:
26	(a) the agency or employee has referred a proposal to give the
27	authorisation to the Minister under subsection 161(1); and
28	(b) the Minister has decided under subsection 161A(1) that this
29 30	Subdivision does not apply in relation to the referral or the action.
31	325 Subsection 161(1)
32	After "section 160", insert "(disregarding subsection 160(1A))".

1	326	Subsection 161(2)
2		After "section 160", insert "(disregarding subsection 160(1A))".
3	327	After section 161
4		Insert:
5	161A	Minister may decide that advice is not required
6		(1) If:
7		(a) the Minister receives a referral under subsection 161(1) of a
8 9		proposal by a Commonwealth agency or employee of the Commonwealth to give an authorisation of an action; and
10		(b) the Minister is satisfied, on the basis of the information in the
1		referral, that the action does not have, will not have or is not
12		likely to have a significant impact on the environment;
13		the Minister may decide, in writing, that this Subdivision does not
4		apply in relation to the referral or the action.
15		(2) If the Minister decides that this Subdivision does not apply in
6		relation to the referral or the action, this Act (other than
17 18		Divisions 2 and 3 of Part 7) applies as if the Minister had decided under Division 2 of Part 7 that the action is not a controlled action.
9		(3) If the Minister decides that this Subdivision does not apply in
20		relation to the referral or the action, the Minister must:
21		(a) give written notice of the decision to the agency or employee
22 23		who referred the proposal to give an authorisation of the action; and
24		(b) publish notice of the decision in accordance with the
25		regulations.
26	161B	Certain provisions of other Acts not to apply if Minister
27		decides that advice is not required
10		(1) This section applies in relation to a provision of another Act that is
28 29		(1) This section applies in relation to a provision of another Act that is expressed to apply if:
80		(a) the advice of the Minister is sought under this Subdivision in
31		relation to a proposal to give an authorisation (however
32		described) of an action; or
33		(b) a proposal to give an authorisation (however described) of an
84		action is referred to the Minister under this Subdivision.

1		(2) The provision does not apply in relation to an action if:
2		(a) a proposal to give an authorisation (however described) of
3		the action has been referred to the Minister under
4		section 161; and
5		(b) the Minister has decided under section 161A that this
6		Subdivision does not apply in relation to the referral or the
7		action.
8 9 10		Note: See, for example, subsections 94(6A) and 95(3A) of the <i>Airports Act</i> 1996 and subsections 16(5) and 29(5) of the <i>Hazardous Waste</i> (Regulation of Exports and Imports) Act 1989.
11	328	Subsection 163(2)
12		Omit "30 days", substitute "30 business days".
13	329	Paragraph 163(2)(a)
14		Repeal the paragraph, substitute:
15		(a) a report mentioned in subsection 84(3) relating to the action;
16		or
17		(aa) a finalised recommendation report under Division 3A of
18		Part 8 (as applied by section 162) relating to the action; or
19		(ab) the documents given to the Minister under subsection 95B(1)
20		(as applied by section 162), or the statement given to the
21		Minister under subsection 95B(3) (as applied by section 162)
22		as the case requires, relating to the action; or
23		(ac) a finalised public environment report under Division 5 of
24		Part 8 (as applied by section 162) relating to the action; or
25		(ad) a finalised environmental impact statement under Division 6
26		of Part 8 (as applied by section 162) relating to the action; or
27	330	Subdivision B of Division 4 of Part 11
28		Repeal the Subdivision.
29	331	Paragraphs 168(1)(a) and (b)
30		Repeal the paragraphs, substitute:
31		(a) specify that one of the following is to apply in relation to the
32		action:
33		(i) Division 3A of Part 8;
34		(ii) Division 4 of Part 8;
35		(iii) Division 5 of Part 8;

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	(iv) Division 6 of Part 8;
	(v) Division 7 of Part 8;
	(vi) Subdivision A of Division 1 of Part 10; and
	(b) if it specifies that Division 3A, 4, 5 or 6 of Part 8 is to apply
	in relation to the action—specify the person who is taken to be the designated proponent of the action for the purposes of
	that Division.
332	Subsection 168(2)
	Repeal the subsection.
333	Paragraph 168(3)(a)
	Omit "guidelines for the content", substitute "tailored guidelines for the preparation".
334	Paragraph 168(3)(b)
	Omit "comment; or", substitute "comment.".
335	Paragraph 168(3)(c)
	Repeal the paragraph.
336	Paragraph 168(4)(a)
	Omit "guidelines for the content", substitute "tailored guidelines for the preparation".
337	Paragraph 168(4)(b)
	Omit "comment; or", substitute "comment.".
338	Paragraph 168(4)(c)
	Repeal the paragraph.
339	Subsection 168(6)
	Before "Division 1", insert "Subdivision A of".
340	Paragraphs 168(6)(a) and (b)
	Omit "Division" (wherever occurring), substitute "Subdivision".
341	Subsection 169(3)
	Repeal the subsection, substitute:

1	M	odification of Division 4 of Part 8
2 3 4 5	re as	lso, if the agreement states that Division 4 of Part 8 is to apply in elation to the action, that Division applies in relation to the action if paragraphs 95(2)(a) and (b) and 95A(3)(a), (b) and (c) merely aftered to specified information relating to the action.
6	342 Section	n 170
7	Before	"Division 1", insert "Subdivision A of".
8 9	Note: The hea "Division	ding to section 170 is altered by inserting " Subdivision A of " before on 1 ".
10	343 Paragr	aph 170(a)
11	Omit "	Division", substitute "Subdivision".
12	344 After p	aragraph 170A(d)
13	Insert:	
14	(0	da) each draft recommendation report and invitation (if any)
15		published in the immediately preceding week under
16 17		Division 3A of Part 8 (about assessment on referral information);
18	345 Paragr	aph 170A(i)
19	Repeal	the paragraph, substitute:
20 21 22		(i) each finalised recommendation report given to the Minister under Division 3A of Part 8 in the immediately preceding week;
23 24	(ia) each recommendation report given to the Minister in the immediately preceding week under section 95C, 100 or 105;
25	346 At the	end of Division 5 of Part 11
26	Add:	
27	170B Inforn	nation critical to protecting matters of national
28		nvironmental significance not to be disclosed
29	(1) T	he Minister may, by notice in writing to a person, direct the
30	pe	erson not to disclose specified information when publishing a
31		ocument or material as required or permitted by a specified
32	pı	rovision of this Chapter, if the Minister considers that the

1 2 3		provision of Division 1 of Part 3 (about matters of national environmental significance).
4 5 6	(2)	A provision of this Chapter that is specified in a direction under subsection (1) has effect as if it did not require or permit the publication of the information specified in the direction.
7 8	(3)	A person who is given a direction under subsection (1) must not contravene the direction.
9		Civil penalty: 100 penalty units.
10 11	170BA De	esignated proponent may request Minister to permit commercial-in-confidence information not to be disclosed
12 13 14	(1)	This section applies in relation to the assessment documentation that must be published by the designated proponent of an action to which Division 4, 5 or 6 of Part 8 applies.
15 16 17 18	(2)	The designated proponent may request the Minister, in writing, to permit the designated proponent not to publish so much of the assessment documentation relating to the action as the designated proponent considers is commercial-in-confidence.
19 20	(3)	A request under subsection (2) must include the information prescribed by the regulations.
21 22 23 24 25	(4)	If the Minister is satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence, the Minister may, by written notice to the designated proponent, permit the designated proponent not to publish that part of the assessment documentation.
26 27 28 29 30 31 32 33	(5)	The Minister must not be satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence unless a person demonstrates to the Minister that: (a) release of the information in that part would cause competitive detriment to the person; and (b) the information in that part is not in the public domain; and (c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a
34		Territory; and

1	(d) the information in that part is not readily discoverable.
2 3 4 5 6 7	(6) If the Minister permits the designated proponent not to publish a part of the assessment documentation that the Minister considers is commercial-in-confidence, the provision of Division 4, 5 or 6 of Part 8 that requires the designated proponent to publish the assessment documentation has effect as if it did not require the publication of that part of the assessment documentation.
8	(7) In this section:
9 10	assessment documentation, in relation to an action to which Division 4, 5 or 6 of Part 8 applies, means:
11 12	(a) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
13 14	(i) the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires; and
15 16 17	(ii) the document prepared under paragraph 95B(1)(a) or the information referred to in subsection 95B(4), as the case requires; or
18 19	(b) if Division 5 of Part 8 (public environment reports) applies to the action:
20 21	(i) the draft public environment report relating to the action given to the Minister under paragraph 98(1)(ab); and
22 23	(ii) the finalised public environment report relating to the action given to the Minister under section 99; or
24 25	(c) if Division 6 of Part 8 (environmental impact statements) applies to the action:
26 27	(i) the draft environmental impact statement relating to the action given to the Minister under paragraph 103(1)(ab);
28 29 30	and (ii) the finalised environmental impact statement relating to the action given to the Minister under section 104.
31	347 At the end of Part 11
32	Add

116

Division 6—Withdrawal of referrals

2	170C	Withdrawal of referral of proposal to take an action
3		(1) Subject to subsection (2), a person who:
4		(a) has referred a proposal to take an action to the Minister under section 68; or
5		(b) is named as the person proposing to take an action in a
7		proposal that is referred to the Minister under section 69 or
8		71;
9		may withdraw the referral, by written notice to the Minister.
10		(2) The referral cannot be withdrawn after the Minister has decided, under Part 9, whether or not to approve the taking of the action.
2		(3) If the Minister receives a notice withdrawing the referral, the
13		Minister must publish notice of the withdrawal of the referral in
14		accordance with the regulations.
15		(4) If the referral is withdrawn, the provisions of this Chapter that
.6 .7		would, apart from this subsection, have applied to the action cease to apply to the action.
.8	348	Before Part 12 in Chapter 5
9		Insert:
20 21	Part	11A—Interpretation
22	170D	References to business days are references to Canberra business days
24 25		A reference in this Chapter to a business day is a reference to a day that is a business day (as defined in section 528) in Canberra.
26	349	Section 172
27		Repeal the section, substitute:

1 2	172	Inventories of listed threatened species etc. on Commonwealth land
3		(1) The Minister may prepare an inventory covering an area of
4		Commonwealth land that identifies, and states the abundance of,
5		the listed threatened species, listed threatened ecological
6		communities, listed migratory species and listed marine species on
7		the area of land if:
8 9		(a) the Minister is satisfied that the area of land is of importance for the conservation of biodiversity; and
10		(b) the area of land is not covered by a plan that:
11		(i) has an object (whether express or implied) of either
12 13		protecting the environment or promoting the conservation of biodiversity; and
14		(ii) is in force under a law of the Commonwealth.
1-7		(ii) is in force under a law of the Commonwealth.
15		(2) A Commonwealth agency must provide all reasonable assistance in
16		connection with the preparation of an inventory if:
17		(a) the inventory is to cover an area of Commonwealth land; and
18		(b) the agency has an interest in the area of land.
19		(3) For the purposes of paragraph (2)(b), a Commonwealth agency has
20		an interest in an area of Commonwealth land if the agency:
21		(a) has a legal or equitable interest in the area; or
22		(b) occupies the area; or
23		(c) has administrative responsibilities relating to the area or to
24		actions taken in the area.
25	350	Section 173
26		Repeal the section, substitute:
27	173	Surveys of cetaceans, listed threatened species etc. in
28		Commonwealth marine areas
29		(1) The Minister may prepare a survey covering a Commonwealth
30		marine area that identifies, and states the extent of the range of,
31		cetaceans, listed threatened species, listed threatened ecological
32		communities, listed migratory species and listed marine species in
33		the area if:
34		(a) the Minister is satisfied that the area is of importance for the
35		conservation of biodiversity; and

(i) has an object (whether express or implied protecting the environment or promoting conservation of biodiversity; and (ii) is in force under a law of the Commonwer of the Commonwer of the connection with the preparation of a survey if: (a) the survey is to cover a Commonwealth marin (b) the agency has an interest in the area. (3) For the purposes of paragraph (2)(b), a Commonwer an interest in a Commonwealth marine area if the age (a) has a legal or equitable interest in the area; or (b) occupies the area; or (c) has administrative responsibilities relating to the actions taken in the area. 351 Section 175 Repeal the section. 352 After subsection 176(4) Insert: (4A) A bioregional plan prepared under subsection (1) or legislative instrument. 353 Subsection 179(6) Repeal the subsection, substitute: (6) A native species is eligible to be included in the condependent category at a particular time if, at that
conservation of biodiversity; and (ii) is in force under a law of the Commonwe (2) A Commonwealth agency must provide all reasonate connection with the preparation of a survey if: (a) the survey is to cover a Commonwealth marin (b) the agency has an interest in the area. (3) For the purposes of paragraph (2)(b), a Commonwealth marine area if the agency has a legal or equitable interest in the area; or (b) occupies the area; or (c) has administrative responsibilities relating to the actions taken in the area. 351 Section 175 Repeal the section. 352 After subsection 176(4) Insert: (4A) A bioregional plan prepared under subsection (1) or legislative instrument. 353 Subsection 179(6) Repeal the subsection, substitute: (6) A native species is eligible to be included in the content of the con
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(a) the survey is to cover a Commonwealth marin (b) the agency has an interest in the area. (3) For the purposes of paragraph (2)(b), a Commonwealth marine area if the agency has a legal or equitable interest in the area; or (b) occupies the area; or (c) has administrative responsibilities relating to the actions taken in the area. 351 Section 175 Repeal the section. 352 After subsection 176(4) Insert: (4A) A bioregional plan prepared under subsection (1) or legislative instrument. 353 Subsection 179(6) Repeal the subsection, substitute: (6) A native species is eligible to be included in the content of the area.
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(b) occupies the area; or (c) has administrative responsibilities relating to tactions taken in the area. 351 Section 175 Repeal the section. 352 After subsection 176(4) Insert: (4A) A bioregional plan prepared under subsection (1) or legislative instrument. 353 Subsection 179(6) Repeal the subsection, substitute: (6) A native species is eligible to be included in the contact of the contact
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legislative instrument. 353 Subsection 179(6) Repeal the subsection, substitute: (6) A native species is eligible to be included in the <i>con</i>
Repeal the subsection, substitute: (6) A native species is eligible to be included in the <i>con</i>
(6) A native species is eligible to be included in the <i>con</i>
(a) the species is the focus of a specific conservation
the cessation of which would result in the spec
vulnerable, endangered or critically endangere
(1) (1 (11) 1 1 ((1) 1
(i) the species is a species of fish; (ii) the species is the focus of a plan of mana
(i) the species is a species of fish;

1 2		that its chances of long term survival in nature are maximised;
3		(iii) the plan of management is in force under a law of the Commonwealth or of a State or Territory;
5 6		(iv) cessation of the plan of management would adversely affect the conservation status of the species.
7		(7) In subsection (6):
8 9 10		<i>fish</i> includes all species of bony fish, sharks, rays, crustaceans, molluses and other marine organisms, but does not include marine mammals or marine reptiles.
11	354	Subsection 184(1)
12 13		Omit "instrument published in the <i>Gazette</i> ", substitute "legislative instrument".
14	355	Paragraph 184(1)(a)
15		After "list", insert "in accordance with Subdivision AA".
16 17	356	After paragraph 184(1)(a) Insert:
18 19		(aa) including items in the list in accordance with subsection 186(3), (4) or (5); or
20	357	Paragraph 184(1)(c)
21 22		After "list" (last occurring), insert "in accordance with Subdivision AA".
23	358	Subsections 184(2), (3), (4) and (5)
24		Repeal the subsections, substitute:
25 26		(2) Part 6 of the <i>Legislative Instruments Act 2003</i> does not apply to an instrument made under subsection (1).
27	359	Section 185
28		Repeal the section.
29	360	Subsections 186(1) and (2)
30		Repeal the subsections, substitute:

1		Including native species in a category
2		(1) Subject to subsections (3), (4) and (5), the Minister must not include (whether as a result of a transfer or otherwise) a native
4		species in a particular category unless satisfied that the native
5		species is eligible to be included in that category.
6		(2) In deciding whether to include a native species in a particular
7		category (whether as a result of a transfer or otherwise), the only
8		matters the Minister may consider are matters relating to:
9		(a) whether the native species is eligible to be included in that
10		category; or
11 12		(b) the effect that including the native species in that category could have on the survival of the native species.
13		Deleting native species from a category
14		(2A) The Minister must not delete (whether as a result of a transfer or
15		otherwise) a native species from a particular category unless
16		satisfied that:
17		(a) the native species is no longer eligible to be included in that
18		category; or
19		(b) the inclusion of the native species in that category is not
20		contributing, or will not contribute, to the survival of the
21		native species.
22		(2B) In deciding whether to delete a native species from a particular
23		category (whether as a result of a transfer or otherwise), the only
24		matters the Minister may consider are matters relating to:
25		(a) whether the native species is eligible to be included in that
26		category; or
27		(b) the effect that the inclusion of the native species in that
28		category is having, or could have, on the survival of the
29		native species.
30	Note:	The following heading to subsection 186(3) is inserted "Including similar species to an
31		eligible species".
32	361	Section 187
33		Repeal the section, substitute:

1	187	Amending list of ecological communities
2		Including ecological communities in a category
3		(1) The Minister must not include (whether as a result of a transfer or
4		otherwise) an ecological community in a particular category unless
5		satisfied that the ecological community is eligible to be included in
6		that category.
7		(2) In deciding whether to include an ecological community in a
8		particular category (whether as a result of a transfer or otherwise),
9		the only matters the Minister may consider are matters relating to:
0		(a) whether the ecological community is eligible to be included
1		in that category; or
2		(b) the effect that including the ecological community in that
13		category could have on the survival of the ecological
4		community.
15		Deleting ecological communities from a category
6		(3) The Minister must not delete (whether as a result of a transfer or
17		otherwise) an ecological community from a particular category
8		unless satisfied that:
9		(a) the ecological community is no longer eligible to be included
20		in that category; or
21		(b) the inclusion of the ecological community in that category is
22		not contributing, or will not contribute, to the survival of the
23		ecological community.
24		(4) In deciding whether to delete an ecological community from a
25		particular category (whether as a result of a transfer or otherwise),
26		the only matters the Minister may consider are matters relating to:
27		(a) whether the ecological community is eligible to be included
28		in that category; or
29		(b) the effect that the inclusion of the ecological community in
30		that category is having, or could have, on the survival of the
31		ecological community.
32	362	Subsection 189(1)
33		Repeal the subsection, substitute:

1 2 3 4	184(1 regula	eiding whether to make an amendment covered by paragraph (aa), (b) or (d), the Minister must, in accordance with the ations (if any), obtain and consider advice from the Scientific nittee on the proposed amendment.
5	(1A) Subse	ction (1) has effect subject to section 192.
6 7 8 9	subsec partic	ice from the Scientific Committee for the purposes of ction (1) is to the effect that a particular native species, or a ular ecological community, is eligible to be included in the int list in a particular category, the advice must also contain:
10	(a)	a statement that sets out:
11 12		(i) the grounds on which the species or community is eligible to be included in the category; and
13 14		(ii) the main factors that are the cause of it being so eligible; and
15	(b)	either:
16		(i) information about what could appropriately be done to
17		stop the decline of, or support the recovery of, the
18		species or community; or
19		(ii) a statement to the effect that there is nothing that could
20 21		appropriately be done to stop the decline of, or support the recovery of, the species or community; and
22 23		a recommendation on the question whether there should be a recovery plan for the species or community.
24	363 Subsection	on 189(3)
25	Repeal the	subsection, substitute:
26	(3) In pre	paring advice for a proposed amendment to delete an item:
27	(a)	included in a category of a list referred to in section 178 or
28		181; and
29		that had not been included in that category in accordance
30		with subsection 186(3), (4) or (5);
31		ly matters the Scientific Committee may consider are matters
32	relatin	
33	. ,	the survival of the native species or ecological community
34		concerned; or
35 26		the effect that the inclusion in the list of the native species or ecological community concerned is having, or could have, on
36 37		the survival of that native species or ecological community.

(3A) In preparing advice for a proposed amendment to:
(a) include a native species in a category of the list referred to in
section 178 in accordance with subsection 186(3), (4) or (5)
because of the species' resemblance to another species; or
(b) delete a native species from a category of the list referred to
in section 178 that had been included in that category in
accordance with subsection 186(3), (4) or (5) because of the
species' resemblance to another species;
the only matters the Scientific Committee may consider are matters
relating to:
(c) the survival of either species; or
(d) the effect that the inclusion in the list of the first-mentioned
species is having, or could have, on the survival of either
species.
264 Subsections 190(4) (5) and (6)
364 Subsections 189(4), (5) and (6)
Repeal the subsections.
365 After section 189
Insert:
189A Certain information may be kept confidential
(1) This section applies if the Minister considers that the survival of a
native species or ecological community could be threatened by the
disclosure of some or all of the following information, or by the
presence or actions of persons if some or all of the following
information were disclosed publicly:
(a) the precise location of the species in the wild, or of the
community;
(b) any other information about the species or community.
(2) It is sufficient compliance with this Act if only a consul
(2) It is sufficient compliance with this Act if only a general description of the location of the species or community is included
in an instrument or other document created for the purposes of this
Act.
100.
189B Disclosure of Scientific Committee's assessments and advice
(1) A member of the Scientific Committee has a duty not to disclose
(1) A member of the Scientific Committee has a duty not to disclose the following to a person other than the Minister, an employee in

1 2	the Department whose duties relate to the Committee or another member of the Committee:
3	(a) an assessment under section 194N in relation to whether an
4	item is eligible for inclusion (whether as a result of a transfer
5	or otherwise) in a list referred to in section 178, 181 or 183,
6	any information relating to the assessment or any information
7 8	about the nomination (if any) that led to the making of the assessment;
	(b) advice under section 189 concerning an amendment covered
9 10	by subsection 189(1) or any information relating to the
11	advice.
12	(2) However:
13 14	(a) the duty not to disclose a thing described in paragraph (1)(a) in relation to an item does not exist after:
15	(i) registration under Division 3 of Part 4 of the Legislative
16	Instruments Act 2003 of an instrument made under
17	section 189 in relation to the item; or
18	(ii) the Minister decides under paragraph 194Q(1)(b) not to
19	include the item in a list referred to in section 178, 181
20	or 183; and
21	(b) the duty not to disclose a thing described in paragraph (1)(b)
22	in relation to an amendment does not exist after:
23	(i) registration under Division 3 of Part 4 of the Legislative
24	Instruments Act 2003 of an instrument made under
25	section 189 relating to the amendment; or
26	(ii) the Minister decides under this Subdivision not to
27	remove the item from a list referred to in section 178,
28	181 or 183.
29	(3) Subsection (1) does not apply to a disclosure of particular
30	information if:
31	(a) the Chair of the Scientific Committee requests the Minister to
32	give permission to disclose that information to a particular
33	person (or persons within a particular group of persons); and
34	(b) the Minister gives that permission; and
35	(c) the disclosure is made to that person (or a person within that
36	group).
37	(4) After a member of the Scientific Committee has ceased under
38	subsection (2) to have a duty not to disclose:

1 2 3	(a) an assessment under section 194N in relation to whether an item is eligible for inclusion (whether as a result of a transfer or otherwise) in a list referred to in section 178, 181 or 183;
5	(b) advice under section 189 concerning an amendment covered
6 7 8	by subsection 189(1); the member must give a copy of the assessment or advice to anyone who asks for it.
9	(5) If:
10 11	(a) a member of the Scientific Committee proposes to give a person under subsection (4):
12 13	(i) a copy of an assessment relating to an item concerning a native species or ecological community; or
14 15	(ii) a copy of advice relating to an amendment concerning a native species or ecological community; and
16 17	(b) the member is aware that, under section 189A, it would be sufficient compliance with this Act if the copy included only
18	a general location of the species or community;
19	the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description
20 21 22	than is necessary for sufficient compliance with this Act under that section.
23	366 Section 191
24	Repeal the section.
25	367 Section 194
26	Repeal the section, substitute:
27	194 Lists must be publicly available
28	The Minister must ensure that:
29	(a) up-to-date copies of the lists referred to in sections 178, 181
30 31	and 183 are available for free to the public on request; and (b) an up-to-date copy of the lists are available on the Internet.
32 33	Note: The copies of the lists made publicly available may not contain certain information kept confidential under section 189A.
34	368 After Subdivision A of Division 1 of Part 13

Insert:

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2

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Subdivision AA—The nomination and listing process

194A Simplified outline

The following is a simplified outline of this Subdivision:

4 This Subdivision sets out the usual process for including an item in 5 a list referred to in section 178, 181 or 183, or transferring an item 6 from one category in one of those lists to another category in the 7 8 The usual process involves an annual cycle that revolves around 9 12-month periods known as assessment periods. The Minister 10 determines the start of the first assessment period (see 11 section 194C). 12 The usual process involves the following steps for each assessment 13 period for a list: 14 the Minister may determine conservation themes (a) 15 (this step is optional) (see section 194D); 16 the Minister invites people to nominate items for (b) 17 inclusion in the list referred to in section 178, 181 18 or 183, and gives the nominations to the Scientific 19 Committee (see sections 194E and 194F); 20 the Scientific Committee prepares, and gives to the 21 Minister, a list of items (which will mostly be 22 items that have been nominated) that it thinks 23 should be assessed (see sections 194G to 194J); 24 the Minister finalises the list of items that are to be (d) 25 assessed (see sections 194K and 194L); 26 the Scientific Committee invites people to make 27 (e) comments about the item in the finalised list (see 28

29

section 194M);

1 2 3	(f) the Scientific Committee ass finalised list, and gives the a Minister (see sections 194N	ssessments to the
4 5 6	(g) the Minister decides whether assessed should be included in section 178, 181 or 183 (s	in the list referred to
7 8	The steps mentioned in paragraphs (a) to (d) completed before the start of the assessment	
9	194B Definitions	
10	(1) In this Subdivision:	
11	assessment period has the meaning given by	subsection 194C(1).
12 13	eligible for assessment consideration, in relaperiod, has the meaning given by subsection	
14 15	finalised priority assessment list for an assessmenting given by subsection 194K(4).	ssment period has the
16	includes has a meaning affected by subsection	on (2).
17 18	proposed priority assessment list for an asse meaning given by subsection 194G(1).	ssment period has the
19 20	Subdivision A List means a list referred to in 183.	section 178, 181 or
21 22 23 24	(2) A reference in this Subdivision to including a referred to in section 178 or 181 includes a retransferring the item from one category in the category in the list.	eference to
25	194C Meaning of assessment period	
26 27	(1) For the purposes of this Subdivision, each of assessment period for a Subdivision A List:	-
28 29 30	(a) the period of 12 months starting on the writing by the Minister for the purpose relation to the Subdivision A List;	•

1 2			(b) each period of 12 months starting on an anniversary of the day so determined.
3 4 5		(2)	The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that
6			commencement.
7 8		(3)	A determination under paragraph (1)(a) is a legislative instrument, but neither section 42 nor Part 6 of the <i>Legislative Instruments Act</i>
9			2003 applies to the determination.
10 11	194D	Min	ister may determine conservation themes for an assessment period
12		(1)	Before the Minister invites nominations for an assessment period
13			for a Subdivision A List under section 194E, the Minister may
14			determine one or more conservation themes that the Minister
15			considers should be given priority in relation to the assessment
16			period for the Subdivision A List.
17		(2)	Without limiting subsection (1), the Minister may determine as a
18			conservation theme that priority should be given to the
19			conservation of:
20			(a) particular groups of species; or
21			(b) particular species; or
22			(c) particular regions of Australia.
23		(3)	The Minister may request advice from the Scientific Committee for
24			the purpose of making a determination under subsection (1), and
25			may have regard to any advice the Committee provides in response
26			to the request.
27		(4)	A determination under subsection (1) is a legislative instrument,
28			but section 42 of the Legislative Instruments Act 2003 does not
29			apply to the determination.
30	194E	Min	ister to invite nominations for each assessment period
31		(1)	Before the start of each assessment period for a Subdivision A List,
32		()	the Minister must publish a notice inviting people to nominate
33			items for inclusion in the Subdivision A List.

1 2 3	Note:	Nominations can be for the transfer of an item already on a list covered by section 178 or 181 from one category in the list to another category in the list (see subsection 194B(2)).
4	(2) A no	tice under subsection (1):
5 6	(a)	must be published in accordance with the regulations referred to in paragraph (3)(a); and
7 8	(b)	must invite people to nominate, to the Minister, items for inclusion in the Subdivision A List; and
9 10	(c)	must identify the assessment period to which the notice relates; and
11 12	(d)	must specify a date (the <i>cut-off date</i>) by which nominations must be received, which must be at least 40 business days
13 14		after the notice has been published as required by paragraph (a); and
15 16	(e)	must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations
17 18		referred to in paragraphs (3)(b) and (c), apply to making nominations; and
19	(f)	may also include:
20		(i) information related to any conservation themes that the Minister has determined under section 194D should be
21 22 23		given priority in relation to the assessment period for the Subdivision A List; and
24 25		(ii) any other information that the Minister considers appropriate.
26	(3) The 1	regulations must provide for the following:
27		how a notice under subsection (1) is to be published;
28	(b)	the manner and form for making nominations;
29	(c)	what information is to be included in a nomination.
30	194F Minister	to give nominations to Scientific Committee
31	Nom	inations in relation to first assessment period
32	(1) With	in 30 business days after the cut-off date specified in the
33		e under subsection 194E(1) for the first assessment period, the
34		ster must give the Scientific Committee the nominations that
35		Ainister:
36	(a)	had received before the end of that cut-off date; and

1 2	(b) had not already forwarded to the Scientific Committee, under section 191 (as in force before the commencement of this
3	section), to assess; and
4 5	(c) had not already rejected under section 191 (as in force before the commencement of this section); and
6	(d) does not reject under subsection (3).
7	Nominations in relation to later assessment periods
8	(2) Within 30 business days after the cut-off date (the <i>current cut-off</i>
9	date) specified in the notice under subsection 194E(1) for an
10	assessment period (other than the first) for a Subdivision A List,
11 12	the Minister must give the Scientific Committee the nominations that were received by the Minister in the period:
13	(a) starting immediately after the end of the cut-off date
14	specified in the notice under subsection 194E(1) for the
15	immediately preceding assessment period for the Subdivision
16	A List; and
17	(b) ending at the end of the current cut-off date for the
18	Subdivision A List;
19	other than any such nominations that the Minister has rejected
20	under subsection (3).
21	Minister may reject nominations
22	(3) The Minister may, in writing, reject a nomination if the Minister
23	considers that:
24	(a) the nomination is vexatious, frivolous or not made in good
25	faith; or
26	(b) the Minister considers that regulations referred to in
27	paragraph 194E(3)(b) or (c) have not been complied with in
28	relation to the nomination.
29	(4) If a nomination is rejected under paragraph (3)(b), the Minister
30	must, if practicable, notify the person who made the nomination of
31	the rejection of the nomination and the reason for the rejection.
32	Definition
33	(5) In this section:

nomination means a nomination of an item for inclusion in a

2			Subdivision A List.
3 4	194G	Scie	entific Committee to prepare proposed priority assessment list
5		(1)	Within 40 business days after the Scientific Committee receives
6			the nominations as required by subsection 194F(1) in relation to an
7			assessment period for a Subdivision A List, the Committee must
8			prepare and give to the Minister a list (the <i>proposed priority</i>
9			assessment list) for the assessment period for the Subdivision A
10			List.
11		(2)	The proposed priority assessment list for the Subdivision A List is
12			to consist of such of the items that are eligible for assessment
13			consideration in relation to the assessment period for the
14			Subdivision A List as the Scientific Committee considers it
15			appropriate to include in the proposed priority assessment list,
16			having regard to:
17			(a) any conservation themes determined by the Minister under
18			section 194D in relation to the assessment period for the
19			Subdivision A List; and
20			(b) the Committee's own views about what should be given
21 22			priority in relation to the assessment period for the Subdivision A List; and
			(c) the Committee's capacity to make assessments under this
23 24			Division while still performing its other functions; and
			(d) any other matters that the Committee considers appropriate.
25			(d) any other matters that the Committee considers appropriate.
26		(3)	An item is <i>eligible for assessment consideration</i> in relation to the
27			assessment period for a Subdivision A List if:
28			(a) the item has been nominated by a nomination referred to in
29			subsection (1); or
30			(b) the Committee itself wishes to nominate the item for
31			inclusion in the Subdivision A List; or
32			(c) the item was eligible for assessment consideration, otherwise
33			than because of this paragraph, in relation to the immediately
34			preceding assessment period (if any) for the Subdivision A
35			List but was not included in the finalised priority assessment
36			list for that assessment period for the Subdivision A List.

1 2 3 4 5 6 7 8 9	 (4) Without limiting the generality of the Scientific Committee's discretion under subsection (2), the Committee does not have to include in the proposed priority assessment list an item that has been nominated if the Committee considers that: (a) if the item is not on the Subdivision A List concerned—it is unlikely that the item is eligible to be included in the Subdivision A List; or (b) if the nomination is for the transfer of the item to another category in the Subdivision A List concerned—it is unlikely that the item is eligible to be included in that other category
10 11 12	of the Subdivision A List. (5) For the purposes of subsection (4), the Committee is not required
13 14	to have regard to any information beyond the information that was included in the nomination.
15 16	(6) The proposed priority assessment list is not a legislative instrument.
17	194H Matters to be included in proposed priority assessment list
18 19 20 21 22 23	 (1) The proposed priority assessment list for an assessment period for a Subdivision A List is to include, for each item in the proposed priority assessment list: (a) a description of the item; and (b) an assessment completion time; and (c) any other information required by the regulations.
24 25 26 27 28 29 30 31	 (2) The assessment completion time for an item must be either: (a) a time that is at or before the end of the assessment period for the proposed priority assessment list; or (b) if the Scientific Committee considers it likely that making an assessment in relation to the item will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period for the proposed priority assessment list).
32 33	194J Statement to be given to Minister with proposed priority assessment list
34 35	(1) When the Scientific Committee gives the Minister the proposed priority assessment list for an assessment period for a Subdivision

1 2	A List, the Committee must also give the Minister a statement setting out such information as the Committee considers
3	appropriate relating to:
4	(a) for each item that is included in the proposed priority
5	assessment list—why the Committee included the item in the
6	list; and
7	(b) for each item that is not included in the proposed priority
8	assessment list but that was eligible for assessment
9	consideration because of paragraph 194G(3)(a) or (c)—why
10	the Committee did not include the item in the proposed
11	priority assessment list.
12	(2) The statement must also identify, as items nominated by the
13	Scientific Committee, any items that are included in the proposed
14	priority assessment list because the Committee itself wishes to
15	nominate them (see paragraph 194G(3)(b)).
16	194K The finalised priority assessment list
17	(1) Within 20 business days after the Minister, under section 194G,
18	receives the proposed priority assessment list for an assessment
19	period for a Subdivision A List, the Minister may, in writing, make
20	changes to the proposed priority assessment list as mentioned in
21	subsection (2).
22	(2) The changes the Minister may make are as follows:
23	(a) including an item in the proposed priority assessment list
24	(and also including the matters referred to in subsection
25	194H(1));
26	(b) omitting an item from the proposed priority assessment list
27	(and also omitting the matters referred to in subsection
28	194H(1));
29	(c) changing the assessment completion time for an item in the
30	proposed priority assessment list;
31	(d) any other changes of a kind permitted by the regulations.
32	(3) In exercising the power to make changes, the Minister may have
33	regard to any matters that the Minister considers appropriate.
34	(4) At the end of the period of 20 business days referred to in
35	subsection (1), the proposed priority assessment list, as changed (if

1 2	at all) by the Minister, becomes the <i>finalised priority assessment list</i> for the assessment period for the Subdivision A List.
3 4	(5) The Minister must notify the Scientific Committee of all changes that the Minister makes to the proposed priority assessment list.
5	(6) The finalised priority assessment list is not a legislative instrument.
6	194L Publication of finalised priority assessment list
7 8 9	(1) The Scientific Committee must publish the finalised priority assessment list for an assessment period for a Subdivision A List on the Internet.
10 11 12	(2) The Scientific Committee must also publish the finalised priority assessment list in accordance with any requirements of the regulations.
13 14	194M Scientific Committee to invite comments on items in finalised priority assessment list
15 16 17 18	(1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must publish a notice inviting people to make comments on the item.
19 20 21 22	(2) The Scientific Committee may, under subsection (1), publish a single notice relating to all of the items on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the items.
23 24 25 26 27	 (3) A notice under subsection (1), in relation to an item or items: (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and (b) must identify the item or items to which the notice relates; and
28 29 30 31	(c) if the Subdivision A List is the list referred to in section 178 or 181—must identify the category of the Subdivision A List in which the item or items are proposed to be included; and (d) must invite people to make comments, to the Scientific
32 33 34	Committee, setting out: (i) if the Subdivision A List is the list referred to in section 178 or 181—views about whether the item or

1 2	items are eligible for inclusion in that category of the Subdivision A List; and
3	(ii) if the Subdivision A List is the list referred to in
4	section 183—views whether the item or items are
5	eligible for inclusion in the Subdivision A List; and
6	(iii) reasons supporting those views; and
7	(e) must specify the date (the <i>cut-off date</i>) by which comments
8	must be received, which must be at least 30 business days
9	after the notice has been published as required by
10	paragraph (a); and
11	(f) must specify, or refer to, the manner and form requirements
12	that, under regulations referred to in paragraph (4)(b), apply
13	to making comments; and
14	(g) may also invite people to comment on other matters that the
15	Scientific Committee considers appropriate; and
16	(h) may also include any other information that the Scientific
17	Committee considers appropriate.
18	(4) The regulations must provide for the following:
19	(a) how a notice under subsection (1) is to be published;
20	(b) the manner and form for making comments.
21	194N Scientific Committee to assess items on finalised priority
22	4 1 4 1 1 4 4 7 7 1 4 4 7 7 7 1 4
	assessment list and give assessments to Minister
23	(1) In relation to each item included in the finalised priority
23	(1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by
23 24	(1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List,
23 24 25	(1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by
23 24 25 26	 (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P): (a) make a written assessment of: (i) whether the item is eligible for inclusion in the
23 24 25 26 27	 (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P): (a) make a written assessment of: (i) whether the item is eligible for inclusion in the Subdivision A List; and
23 24 25 26 27 28	 (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P): (a) make a written assessment of: (i) whether the item is eligible for inclusion in the Subdivision A List; and (ii) if the Subdivision A List is the list referred to in
23 24 25 26 27 28 29	 (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P): (a) make a written assessment of: (i) whether the item is eligible for inclusion in the Subdivision A List; and (ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which
23 24 25 26 27 28 29 30	 (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P): (a) make a written assessment of: (i) whether the item is eligible for inclusion in the Subdivision A List; and (ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which the item is eligible to be included; and
23 24 25 26 27 28 29 30 31	 (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P): (a) make a written assessment of: (i) whether the item is eligible for inclusion in the Subdivision A List; and (ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which the item is eligible to be included; and (b) give to the Minister:
23 24 25 26 27 28 29 30 31 32	 (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P): (a) make a written assessment of: (i) whether the item is eligible for inclusion in the Subdivision A List; and (ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which the item is eligible to be included; and (b) give to the Minister: (i) the written assessment (or a copy of it); and
23 24 25 26 27 28 29 30 31 32 33	 (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P): (a) make a written assessment of: (i) whether the item is eligible for inclusion in the Subdivision A List; and (ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which the item is eligible to be included; and (b) give to the Minister: (i) the written assessment (or a copy of it); and (ii) a copy of the comments referred to in paragraphs (2)(a)
23 24 25 26 27 28 29 30 31 32 33 34 35 36	 (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P): (a) make a written assessment of: (i) whether the item is eligible for inclusion in the Subdivision A List; and (ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which the item is eligible to be included; and (b) give to the Minister: (i) the written assessment (or a copy of it); and (ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into
23 24 25 26 27 28 29 30 31 32 33 34 35	 (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P): (a) make a written assessment of: (i) whether the item is eligible for inclusion in the Subdivision A List; and (ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which the item is eligible to be included; and (b) give to the Minister: (i) the written assessment (or a copy of it); and (ii) a copy of the comments referred to in paragraphs (2)(a)

1 2	(2)	In making an assessment in relation to a place, the Scientific Committee, subject to subsections (3) and (4):
3 4		(a) must take into account the comments the Committee receives in response to the notice under subsection 194M(1) in
5		relation to the item; and
6		(b) may seek, and have regard to, information or advice from any
7		source.
8	(3)	The Scientific Committee is not required to take a comment
9		referred to in paragraph (2)(a) into account if:
0		(a) the Committee does not receive the comment until after the
1		cut-off date specified in the notice under subsection 194M(1)
12		in relation to the item; or
13		(b) the Committee considers that regulations referred to in
4		paragraph 194M(4)(b) have not been complied with in
15		relation to the comment.
16	(4)	In making an assessment, the only matters the Scientific
17		Committee may consider are matters relating to:
8		(a) whether the item is eligible for inclusion in the Subdivision A
9		List; or
20		(b) the effect that including the item in that List could have on
21		the survival of the native species or ecological community
22		concerned.
23	194P Tim	e by which assessments to be provided to Minister
24	(1)	Subsection 194N(1) must be complied with, in relation to an item
25	· /	included in the finalised priority assessment list for an assessment
26		period for a Subdivision A List, by the assessment completion time
27		specified in the finalised priority assessment list for the item, or by
28		that time as extended under this section.
29	(2)	The Scientific Committee may request the Minister to extend the
80		assessment completion time (or that time as previously extended) if
31		the Committee considers that it needs more time to make the
32		assessment.
33	(3)	The Minister may, in response to a request under subsection (2),
34		extend the assessment completion time (or that time as previously
35		extended) by such period (if any) as the Minister considers

1 2		appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.
3	(4)	An extension under subsection (3) must be made in writing.
4 5 6	(5)	If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.
7	194Q Dec	cision about inclusion of an item in the Subdivision A List
8		Minister to decide whether or not to include item
9 10	(1)	After receiving from the Scientific Committee an assessment under section 194N of an item, the Minister must:
11		(a) include the item in the Subdivision A List concerned; or
12		(b) in writing, decide not to include the item in the Subdivision
13		A List concerned.
14 15		Note 1: Under this subsection the Minister can transfer an item already on a Subdivision A List to a different category in the List (see subsection
16		194B(1)).
17 18		Note 2: Sections 186, 187 and 188 contain rules about including items in a Subdivision A List.
19	(2)	If, under subsection (1), the Minister transfers an item to a category
20		of the Subdivision A List, the Minister must at the same time
21 22		delete the item from the category in which it was included before the transfer.
22		
23	(3)	Subject to subsection (4), the Minister must comply with
24 25		subsection (1) within 90 business days after the day on which the Minister receives the assessment.
23		
26	(4)	The Minister may, in writing, extend or further extend the period
27		for complying with subsection (1).
28	(5)	Particulars of an extension or further extension under
29		subsection (4) must be published on the Internet and in any other
30		way required by regulations.
31	(6)	For the purpose of deciding what action to take under
32		subsection (1) in relation to the item:
33		(a) the Minister must have regard to:
34		(i) the Scientific Committee's assessment of the item; and

1 2		(ii) the comments (if any), a copy of which were given to the Minister under subsection 194N(1) with the
3		assessment; and
4 5		(b) the Minister may seek, and have regard to, information or advice from any source.
6		Additional requirements if Minister decides to include place
7		(7) If the Minister includes the item in the Subdivision A List, he or
8		she must, within a reasonable time:
9		(a) if the item was nominated by a person in response to a notice
10 11		under subsection 194E(1)—advise the person that the item has been included in the Subdivision A List; and
12		(b) publish a copy of the instrument referred to in
13		paragraph (1)(a) on the Internet; and
14		(c) publish a copy or summary of that instrument in accordance
15		with any other requirements specified in the regulations.
16		Additional requirements if Minister decides not to include item
17		(8) If the Minister decides not to include the item in the Subdivision A
18 19		List, the Minister must, within 10 business days after making the decision:
20		(a) publish the decision on the Internet; and
21		(b) if the item was nominated by a person in response to a notice
22		under subsection 194E(1)—advise the person of the decision,
23		and of the reasons for the decision.
24	194R	Scientific Committee may obtain advice
25		In performing its functions under this Subdivision, the Scientific
26		Committee may obtain advice from a person with expertise
27		relevant to the inclusion of an item in a Subdivision A List.
28	194S (Co-ordination with Australian Heritage Council—Committee
29		undertaking assessment
30		(1) This section applies if:
31		(a) the Scientific Committee undertakes an assessment under this
32		Subdivision; and

1 2	(b) before giving the assessment to the Minister, the Committee becomes aware that:
3	(i) the Australian Heritage Council is undertaking, or has
4	undertaken, an assessment of a place under Subdivision
5	BA or BB of Division 1A of Part 15 or under
6	Subdivision BA or BB of Division 3A of Part 15; and
7	(ii) there is a matter that is relevant to both the assessment
8	referred to in paragraph (a) and the assessment referred
9	to in subparagraph (i).
10	(2) A member of the Scientific Committee may discuss the matter with
11	a member of the Australian Heritage Council.
12	(3) Before the Scientific Committee gives an assessment to the
13	Minister under this Subdivision, the Committee must comply with
14	subsection (4) or (6).
15	(4) If the Australian Heritage Council has not yet given the Minister an
16	assessment that deals with that matter, the Scientific Committee
17	must:
18	(a) give the Council a copy of the assessment that the Committee
19	proposes to give to the Minister; and
20	(b) invite the Council to give the Committee its comments in
21	relation to that matter; and
22	(c) take into account, in finalising the assessment that the
23	Committee gives the Minister, any comments that the
24	Council makes in relation to that matter in response to that
25	invitation within 14 days, or such longer period as is
26	specified in the invitation, after being given the invitation.
27	(5) If the Scientific Committee gives the Australian Heritage Council a
28	copy of a proposed assessment under paragraph (4)(a), the
29	Committee must also give the Council a copy of the assessment
30	that the Committee gives the Minister.
31	(6) If:
32	(a) the Australian Heritage Council has already given the
33	Minister an assessment that deals with that matter; and
34	(b) the Scientific Committee has been given a copy of that
35	assessment;
36	the Committee must take that assessment into account in finalising
37	the assessment that the Committee gives the Minister.

1 2 3 4 5 6	(7) If, under section 324JR, 324JS, 341JQ or 341JR, the Australian Heritage Council gives the Scientific Committee a proposed assessment, or an assessment, that deals with a particular matter because the Committee is undertaking an assessment that deals with that matter, a member of the Committee may discuss that matter with a member of the Council.
7 8	(8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 189B.
9 10	194T Co-ordination with Australian Heritage Council—Committee given assessment to Minister
11	(1) This section applies if:
12 13	(a) the Scientific Committee has given to the Minister an assessment under this Subdivision; and
14	(b) the Committee is or becomes aware that:
15	(i) the Australian Heritage Council is undertaking an
16	assessment of a place under Subdivision BA or BB of
17	Division 1A of Part 15 or under Subdivision BA or BB
18	of Division 3A of Part 15; and
19	(ii) there is a matter that is relevant to both the assessment
20 21	referred to in paragraph (a) and the assessment referred to in subparagraph (i).
22	(2) The Scientific Committee must, within 7 days after giving the
23 24	assessment to the Minister, or becoming aware, as referred to in paragraph (1)(b):
25	(a) ensure the Australian Heritage Council is aware of the
26	existence of the paragraph (1)(a) assessment dealing with the
27	matter; and
28	(b) give the Council a copy of the assessment.
29	(3) A member of the Scientific Committee may discuss the matter with
30	a member of the Australian Heritage Council.
31	(4) Subsections (2) and (3) have effect despite section 189B.
32	369 Paragraph 196(1)(b)
33	Omit "native".
34	370 Subsection 196(2)

1		Omit "paragraph (1)(d)", substitute "paragraphs (1)(c) and (d)".	
2 3	Note:	The heading to section 196 is altered by omitting " Recklessly killing " and substituting " Killing ".	
4	371	Paragraph 196B(1)(a)	
5		Omit "native".	
6	372	Subsection 196B(2)	
7		Omit "paragraph (1)(c)", substitute "paragraphs (1)(b) and (c)".	
8 9	Note:	The heading to section 196B is altered by omitting "Recklessly taking" and substituting "Taking".	
10	373	Paragraph 196D(1)(a)	
11		Omit "native".	
12	374	Subsection 196D(2)	
13		Omit "paragraph (1)(c)", substitute "paragraphs (1)(b) and (c)".	
14	375	Paragraph 197(c)	
15 16		Omit "a subsection of section 18 or of section 18A", substitute "subsection 18(1), (2), (3), (4), (5) or (6) or 18A(1) or (2)".	
17	376	Subparagraph 197(d)(i)	
18 19		Omit "section 18 or 18A", substitute "subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2)".	
20	377	Subparagraph 197(d)(ii)	
21		Omit "management plan that is an accredited management plan",	
22		substitute "management arrangement or authorisation process that is an	
23		accredited management arrangement or an accredited authorisation	
24		process".	
25	378	After paragraph 197(d)	
26		Insert:	
27		(da) an action that:	
28		(i) is an action, or one of a class of actions, declared by the	
29 30		Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 18(1), (2),	
31		(3), (4), (5), or (6) or 18A(1) or (2); and	

1 2		(ii) is taken in accordance with the bioregional plan to which the declaration relates; or
	(dh)	in the case of sections 196B, 196C, 196D and 196E—an
3	(ub)	action that is trading, keeping or moving a member of a listed
5		threatened species or a listed ecological community, if:
6		(i) when the member of the species or community was
7		taken, the species or community was not a listed
8		threatened species or a listed threatened ecological
9		community, as the case requires; and
10		(ii) the trading, keeping or moving of the member of the
11		species or community occurs during the period of 6
12		months that started when the species or community became a listed threatened species or a listed threatened
13 14		ecological community, as the case requires; or
15	379 At the en	d of section 197
16	Add:	
17	; or (l)	an action, to the extent that it is covered by subsection
18		517A(7); or
19	(m)	an action provided for by, and done in accordance with, a
20		conservation agreement in force under Part 14; or
21	(n)	an action taken in a Commonwealth reserve in accordance
22		with a management plan made under Part 15 and in operation
23		for the reserve; or
24	(0)	an action provided for by, and taken in accordance with, a
25		traditional use of marine resources agreement that:
26		(i) was made and accredited in accordance with regulations
27		made under the <i>Great Barrier Reef Marine Park Act</i> 1975; and
28		(ii) is in force; or
29	(12)	
30	(p)	an action that is taken in accordance with a permit that:
31		(i) was issued under the Antarctic Treaty (Environment
32 33		Protection) Act 1980 or under regulations made under that Act; and
34		(ii) is in force; or
35	(q)	an action that consists of the transit of a member through a
36	-	Commonwealth area in circumstances where the member
37		was:

1 2		(1) obtained from an area that is not a Commonwealth area; or
		(ii) taken from a Commonwealth area in circumstances
3		covered by paragraph (a), (c), (d), (da), (db), (j), (k),
5		(m), (n) , (0) or (p) .
3		(m), (n) , (0) or (p) .
6	380	Paragraph 199(1)(b)
7		After "or 196E", insert ", otherwise than because of paragraph
8		197(db)".
9	381	Subsection 199(4)
10		Repeal the subsection, substitute:
11		(4) Subsection (2) does not apply if:
12		(a) the person, or any other person or body, is required by or
13		under a law of the Commonwealth to notify the Secretary of
14		the action; or
15		(b) the action is in a class of actions:
16		(i) that is specified in an agreement or arrangement
17		between the Secretary and a Commonwealth agency, or
18		an agency of a State or self-governing Territory; and
19		(ii) that the agreement or arrangement provides is to be
20		notified to the Secretary by the agency.
21 22		Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
23	382	Subsections 200(3), (4) and (5)
24		Repeal the subsections, substitute:
25		(3) As soon as practicable after receiving the application, the Minister
26		must cause to be published on the Internet:
27		(a) details of the application; and
28		(b) an invitation for anyone to give the Minister comments
29		within 10 business days (measured in Canberra) on whether
30		the permit should be issued.
31		Note: If the action is also the subject of a referral under Division 1 of Part 7
32		and the referral is made at the same time as the application, the
33		application and invitation for comments that must be published under
34 35		this subsection may be published together with the referral and invitation for comments that must be published under subsection
36		74(3).

1	383	Subsection 201(1)
2		Omit "subsection (3)", substitute "subsections (3) and (3A)".
3	384	After subsection 201(3)
4		Insert:
5		(3A) The Minister must, in deciding whether to issue the permit, have
6		regard to any approved conservation advice for the listed
7 8		threatened species or listed threatened ecological community concerned.
9	385	Subsection 201(5)
10		Repeal the subsection, substitute:
1		(5) In making a decision on the application, the Minister must consider
12		the comments (if any) received: (a) in response to the invitation under subsection 200(3) for
14		anyone to give the Minister comments on whether the permit
15		should be issued; and
16		(b) within the period specified in the invitation.
17	386	Section 206A
18		Before "An", insert "(1)".
9	387	Section 206A
20		Omit "An", substitute "Subject to subsection (2), an".
1 1	200	
21	300	At the end of section 206A
21	300	At the end of section 206A Add:
	300	Add:
22	300	Add: (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a
22	300	Add: (2) Subsection (1) does not apply to a decision made personally by the
22 23 24		Add: (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a
22 23 24 25		Add: (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).
22 23 24 25		Add: (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister). After subsection 207A(1)
222 23 24 24 25 26 27		Add: (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister). After subsection 207A(1) Insert: (1A) In considering whether to list habitat, the Minister must take into

1 2	(a) that the Minister may take into account in considering whether to list habitat; or
3	(b) that the regulations may require or permit the Minister to take into account in considering whether to list habitat.
4	into account in considering whether to list habitat.
5	390 After subsection 207A(3)
6	Insert:
7	(3A) Particular material included in the register does not have to be
8	made available for public inspection if the Minister considers that
9	the interests of relevant landholders could be impeded or
10	compromised by:
11	(a) the disclosure of the material; or
12 13	(b) without limiting paragraph (a)—the presence or actions of persons if the material were disclosed.
14	391 Section 208A
15	Repeal the section, substitute:
15	repeat the section, substitute.
16	208A Minister may accredit plans, regimes or policies
17	(1) The Minister may, by instrument in writing, accredit for the
18	purposes of this Division:
19 20	(a) a plan of management within the meaning of section 17 of the <i>Fisheries Management Act 1991</i> ; or
21	(b) a plan of management within the meaning of section 15A of
22	the Torres Strait Fisheries Act 1984; or
23 24	(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
25	(i) made by a State or self-governing Territory; and
26	(ii) in force under a law of the State or self-governing
27	Territory; or
28	(d) a regime determined in writing by the Australian Fisheries
29	Management Authority under the Fisheries Administration
30	Act 1991 for managing a fishery for which a plan of
31	management (within the meaning of section 17 of the
32	Fisheries Management Act 1991) is not in force; or
33	(e) a policy formulated by the Protected Zone Joint Authority
34	under paragraph 34(b) of the Torres Strait Fisheries Act 1984
35	for managing a fishery for which a plan of management

1			within the meaning of section 15A of the Torres Strait
2			isheries Act 1984) is not in force;
3			finister is satisfied that:
4			ne plan, regime or policy requires persons engaged in fishing
5			nder the plan, regime or policy to take all reasonable steps
6			ensure that members of listed threatened species (other
7			nan conservation dependent species) are not killed or injured
8			s a result of the fishing; and
9			ne fishery to which the plan, regime or policy relates does
10			ot, or is not likely to, adversely affect the survival or
11			ecovery in nature of the species.
12 13		Note 1:	The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).
14		Note 2:	If a plan, regime or policy that is accredited under this section is, or is
15			proposed to be, amended, the Minister may determine under
16 17			section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of
18			this section.
19		(2) An inst	rument under subsection (1) is not a legislative instrument.
20	392	Subsection	209(1)
21		Omit ", by in	nstrument published in the Gazette".
22	393	Paragraphs	s 209(3)(a) and (b)
23		Repeal the p	paragraphs, substitute:
24		(a) al	Il migratory species that are:
25			(i) native species; and
26		(ii) from time to time included in the appendices to the
27		`	Bonn Convention; and
28		(b) al	ll migratory species from time to time included in annexes
29		es	stablished under JAMBA and CAMBA; and
30	394	Subsection	209(4)
31		Omit "by ins	strument published in the <i>Gazette</i> ", substitute "by
32		legislative ir	nstrument".
33	395	Subsection	ı 209(5)
34		Repeal the s	ubsection.
35	396	Subsection	209(6)

1		Omit ", by instrument published in the <i>Gazette</i> ,".
2	397	At the end of section 209
3		Add:
4 5		(7) The list of migratory species made under subsection (1), and any amendments to the list made under paragraph (1)(b) or
6 7 8		subsection (6), are legislative instruments, but neither section 42 nor Part 6 of the <i>Legislative Instruments Act 2003</i> applies to the list or any amendments.
9		(8) In this Act:
10 11		<i>migratory species</i> has the meaning given by Article I of the Bonn Convention.
12	398	Paragraph 211(1)(b)
13		Omit "migratory".
14	399	Subsection 211(2)
15		Omit "paragraph (1)(d)", substitute "paragraphs (1)(c) and (d)".
16 17	Note:	The heading to section 211 is altered by omitting " Recklessly killing " and substituting " Killing ".
18	400	Paragraph 211B(1)(a)
19		Omit "migratory".
20	401	Subsection 211B(2)
21		Omit "paragraph (1)(c)", substitute "paragraphs (1)(b) and (c)".
22 23	Note:	The heading to section 211B is altered by omitting " Recklessly taking " and substituting " Taking ".
24	402	Paragraph 211D(1)(a)
25		Omit "migratory".
26	403	Subsection 211D(2)
27		Omit "paragraph (1)(c)", substitute "paragraphs (1)(b) and (c)".
28	404	Paragraph 212(c)
29		Omit "or section 20A", substitute "or 20A(1) or (2)".

1	405	Subparagraph 212(d)(i)
2		Omit "section 20 or 20A", substitute "subsection 20(1) or 20A(1) or
3		(2)".
4	406	Subparagraph 212(d)(ii)
5		Omit "management plan that is an accredited management plan",
6		substitute "management arrangement or an authorisation process that is
7 8		an accredited management arrangement or an accredited authorisation process".
9	407	After paragraph 212(d)
10		Insert:
11		(da) an action that:
12		(i) is an action, or one of a class of actions, declared by the
13		Minister under section 37A not to require an approval
14		under Part 9 for the purposes of subsection 20(1) or
15		20A(1) or (2); and
16 17		(ii) is taken in accordance with the bioregional plan to which the declaration relates; or
18		(db) in the case of sections 211B, 211C, 211D and 211E—an
19		action that is trading, keeping or moving a member of a listed
20		migratory species, if:
21		(i) when the member of the species was taken, the species
22		was not a listed migratory species; and
23		(ii) the trading, keeping or moving of the member of the
24		species occurs during the period of 6 months that started
25		when the species became a listed migratory species; or
26	408	At the end of section 212
27		Add:
28		; or (l) an action, to the extent that it is covered by subsection
29		517A(7); or
30		(m) an action provided for by, and done in accordance with, a
31		conservation agreement in force under Part 14; or
32		(n) an action taken in a Commonwealth reserve in accordance
33 34		with a management plan made under Part 15 and in operation for the reserve; or
35		(o) an action provided for by, and taken in accordance with, a
36		traditional use of marine resources agreement that:
		6

1 2 3		(i) was made and accredited in accordance with regulations made under the <i>Great Barrier Reef Marine Park Act</i> 1975; and
4		(ii) is in force; or
5		(p) an action that is taken in accordance with a permit that:
6		(i) was issued under the Antarctic Treaty (Environment
7		Protection) Act 1980 or under regulations made under
8		that Act; and
9		(ii) is in force; or
10		(q) an action that consists of the transit of a member through a
11		Commonwealth area in circumstances where the member
12		was:
13		(i) obtained from an area that is not a Commonwealth area;
14		or
15		(ii) taken from a Commonwealth area in circumstances
16 17		covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p).
1,		(m), (n) , (0) or (p) .
18	409	Paragraph 214(1)(b)
19		After "or 211E", insert ", otherwise than because of paragraph
1/		Three of 2112, insert , otherwise than occurse of paragraph
20		212(db)".
	410	
20	410	212(db)".
20 21	410	212(db)". Subsection 214(4)
20 21 22	410	212(db)". Subsection 214(4) Repeal the subsection, substitute: (4) Subsection (2) does not apply if: (a) the person, or any other person or body, is required by or
20 21 22 23 24 25	410	212(db)". Subsection 214(4) Repeal the subsection, substitute: (4) Subsection (2) does not apply if: (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of
20 21 22 23 24 25 26	410	212(db)". Subsection 214(4) Repeal the subsection, substitute: (4) Subsection (2) does not apply if: (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
20 21 22 23 24 25 26 27	410	 212(db)". Subsection 214(4) Repeal the subsection, substitute: (4) Subsection (2) does not apply if: (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or (b) the action is in a class of actions:
20 21 22 23 24 25 26 27 28	410	 212(db)". Subsection 214(4) Repeal the subsection, substitute: (4) Subsection (2) does not apply if: (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or (b) the action is in a class of actions: (i) that is specified in an agreement or arrangement
20 21 22 23 24 25 26 27 28 29	410	 212(db)". Subsection 214(4) Repeal the subsection, substitute: (4) Subsection (2) does not apply if: (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or (b) the action is in a class of actions: (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or
20 21 22 23 24 25 26 27 28 29 30	410	212(db)". Subsection 214(4) Repeal the subsection, substitute: (4) Subsection (2) does not apply if: (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or (b) the action is in a class of actions: (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
20 21 22 23 24 25 26 27 28 29	410	 212(db)". Subsection 214(4) Repeal the subsection, substitute: (4) Subsection (2) does not apply if: (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or (b) the action is in a class of actions: (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or
20 21 22 23 24 25 26 27 28 29 30 31	410	 Subsection 214(4) Repeal the subsection, substitute: (4) Subsection (2) does not apply if: (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or (b) the action is in a class of actions: (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and (ii) that the agreement or arrangement provides is to be
20 21 22 23 24 25 26 27 28 29 30 31 32		 Subsection 214(4) Repeal the subsection, substitute: (4) Subsection (2) does not apply if: (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or (b) the action is in a class of actions: (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and (ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency. Note: The defendant bears an evidential burden in relation to the matters in

1 2		(3) As soon as practicable after receiving the application, the Minister must cause to be published on the Internet:
3		(a) details of the application; and
4		(b) an invitation for anyone to give the Minister comments
5		within 10 business days (measured in Canberra) on whether
6		the permit should be issued.
7		Note: If the action is also the subject of a referral under Division 1 of Part 7
8		and the referral is made at the same time as the application, the
9		application and invitation for comments that must be published under this subsection may be published together with the referral and
1		invitation for comments that must be published under subsection
12		74(3).
13	412	Subsection 216(4)
4		Repeal the subsection, substitute:
15		(4) In making a decision on the application, the Minister must consider
6		the comments (if any) received:
17		(a) in response to the invitation under subsection 215(3) for
8		anyone to give the Minister comments on whether the permit
9		should be issued; and
20		(b) within the period specified in the invitation.
21	413	Section 221A
22		Before "An", insert "(1)".
_	44.4	Section 221A
23	414	
24		Omit "An", substitute "Subject to subsection (2), an".
25	415	At the end of section 221A
26		Add:
27		(2) Subsection (1) does not apply to a decision made personally by the
28		Minister (but the subsection does apply to a decision made by a
29		delegate of the Minister).
80	416	Section 222A
31		Repeal the section, substitute:

1	222A Minister may accredit plans, regimes or policies
2 3	(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
4 5	(a) a plan of management within the meaning of section 17 of the <i>Fisheries Management Act 1991</i> ; or
6 7	(b) a plan of management within the meaning of section 15A of the <i>Torres Strait Fisheries Act 1984</i> ; or
8 9	(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
10	(i) made by a State or self-governing Territory; and
11 12	(ii) in force under a law of the State or self-governing Territory; or
13 14 15 16 17	(d) a regime determined in writing by the Australian Fisheries Management Authority under the <i>Fisheries Administration</i> Act 1991 for managing a fishery for which a plan of management (within the meaning of section 17 of the <i>Fisheries Management Act 1991</i>) is not in force; or
18 19 20 21 22	(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the <i>Torres Strait Fisheries Act 1984</i> for managing a fishery for which a plan of management (within the meaning of section 15A of the <i>Torres Strait Fisheries Act 1984</i>) is not in force;
23	if the Minister is satisfied that:
24 25 26 27	(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and
28 29 30	(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that
31	species.
32 33	Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).
34 35 36 37 38	Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.
39	(2) An instrument under subsection (1) is not a legislative instrument.

1	417 Subsection 224(2)
2	Omit "(other than an export/import provision)".
3	418 Subsection 224(4)
4	Repeal the subsection.
5	419 Subdivision B of Division 3 of Part 13 (heading)
6	Repeal the heading, substitute:
7 8	Subdivision B—Australian Whale Sanctuary and important cetacean habitat areas
9	420 Subsection 225(2)
10	Repeal the subsection, substitute:
11	(2) The Australian Whale Sanctuary comprises:
12	(a) any waters of the sea inside the seaward boundary of the
13	exclusive economic zone, except:
14	(i) waters, rights in respect of which have been vested in a
15	State by section 4 of the Coastal Waters (State Title) Act
16	1980 or in the Northern Territory by section 4 of the
17	Coastal Waters (Northern Territory Title) Act 1980; and
18 19	(ii) waters within the limits of a State or the Northern Territory; and
20	(b) any waters over the continental shelf, except:
21	(i) waters, rights in respect of which have been vested in a
22	State by section 4 of the Coastal Waters (State Title) Act
23	1980 or in the Northern Territory by section 4 of the
24	Coastal Waters (Northern Territory Title) Act 1980; and
25	(ii) waters within the limits of a State or the Northern
26	Territory; and
27	(iii) waters covered by paragraph (a); and
28 29	(c) so much of the coastal waters of a State or the Northern Territory as are prescribed waters.
30	Note: This subsection is subject to subsection 5(3).
31	421 After section 228
32	Insert:

1	228A	Important cetacean habitat areas
2 3 4		(1) The Minister may, by legislative instrument, declare a specified area in the Australian Whale Sanctuary to be an important cetacean habitat area.
5 6 7 8 9		(2) The regulations may specify criteria to be applied by the Minister in determining whether to declare an area to be an important cetacean habitat area. If regulations are made for the purposes of this section, the Minister may declare an area to be an important cetacean habitat area only if he or she is satisfied that the area meets the criteria prescribed by the regulations.
11	422	After subsection 229(1)
12		Insert:
13		(1A) Strict liability applies to paragraph (1)(c).
14		Note: For <i>strict liability</i> , see section 6.1 of the <i>Criminal Code</i> .
15 16	Note:	The heading to section 229 is altered by omitting " Recklessly killing " and substituting " Killing ".
17	423	Subsection 229B(4)
18		Insert:
19		trade a cetacean:
20		(a) includes:
21 22 23		 (i) buy the cetacean, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or
24 25 26 27 28		(ii) sell the cetacean, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or
29 30		(iii) cause or allow any of the acts referred to in subparagraph (i) or (ii) to be done; but
31 32 33		(b) does not include export the cetacean from Australia or an external Territory or import it into Australia or an external Territory.
34		Note: For provisions relating to export or import, see Part 13A.

1	424	Subsection 229D(2)
2		Omit "The offence", substitute "An offence against subsection (1)".
3	Note 1	: The heading to section 229D is replaced by the heading " Treating cetaceans ".
4 5	Note 2	2: The following heading to subsection 229D(1) is inserted " <i>Treating unlawfully killed or taken cetaceans</i> ".
6	425	After subsection 229D(2)
7		Insert:
8		Treating unlawfully imported cetaceans
9		(2A) A person commits an offence if:
10		(a) the person treats a cetacean; and
11		(b) the cetacean has been unlawfully imported.
12 13		Note 1: Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.
14 15 16		Note 2: Subsection 4B(3) of the <i>Crimes Act 1914</i> lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.
17 18 19		(2B) An offence against subsection (2A) is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.
20	426	Subsection 230(1)
21		Omit "Subject to section 231, a person", substitute "A person".
22 23	Note:	The following heading to subsection 230(1) is inserted "Possession of unlawfully killed cetaceans".
24	427	Subsection 230(2)
25		Omit "this section", substitute "subsection (1)".
26	428	At the end of section 230
27		Add:
28		Possession of unlawfully imported cetaceans
29		(3) A person commits an offence if:
30		(a) the person has in his or her possession:
31		(i) a cetacean; or

1			(ii) a part of a cetacean; or
2			(iii) a product derived from a cetacean; and
3 4		(b)	the cetacean, part or product, as the case may be, has been unlawfully imported.
5 6		Note 1	1: Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.
7 8 9		Note 2	2: Subsection 4B(3) of the <i>Crimes Act 1914</i> lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.
10 11 12		impr	ffence against subsection (3) is punishable on conviction by isonment for not more than 5 years or a fine not exceeding penalty units, or both.
13	429	After para	agraph 231(a)
14		Insert:	
15		(aa)	an action that is whale watching carried out in accordance
16		, ,	with regulations referred to in paragraph 238(3)(c), but only
17			if:
18			(i) the whale watching is not carried out for a commercial
19			purpose; or
20 21			(ii) the whale watching is carried out in an area that is not an important cetacean habitat area; or
22	430	After para	agraph 231(b)
23		Insert:	
24		(ba)	an action that is covered by an approval in operation under
25		, ,	Part 9 for the purposes of subsection 23(1) or (2) or 24A(1),
26			(2), (3) or (4); or
27		(bb)	an action that:
28			(i) is one of a class of actions declared by the Minister
29			under section 33 not to require an approval under Part 9
30			for the purposes of subsection $23(1)$ or (2) or $24A(1)$,
31			(2), (3) or (4); and
32			(ii) is taken in accordance with a management arrangement
33 34			or an authorisation process that is an accredited management arrangement or an accredited authorisation
3 4 35			process for the purposes of the declaration; or
36		(bc)	an action that:
		(30)	

1 2 3 4	(i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 23(1) or (2) or 24A(1), (2), (3) or (4); and
5 6	(ii) is taken in accordance with the bioregional plan to which the declaration relates; or
7 43	1 After paragraph 231(g)
8	Insert:
9 10 11	(ga) an action that is taken in accordance with a permit issued under regulations made under the <i>Great Barrier Reef Marine Park Act 1975</i> and in force; or
12 432	2 At the end of section 231
13	Add:
14	; or (i) an action provided for by, and done in accordance with, a
15	conservation agreement in force under Part 14; or
16	(j) an action taken in a Commonwealth reserve in accordance
17	with a management plan made under Part 15 and in operation
18	for the reserve; or
19	(k) an action that consists of the transit of a cetacean through a
20	Commonwealth area in circumstances where the cetacean was:
21 22	(i) obtained from an area that is not a Commonwealth area;
23	or
24	(ii) taken from a Commonwealth area in circumstances
25 26	covered by paragraph (a), (ba), (bb), (bc), (ga), (h), (i) or (j).
27 43	3 Subsection 232(4)
28	Repeal the subsection, substitute:
29	(4) Subsection (2) does not apply if:
30	(a) the person, or any other person or body, is required by or
31	under a law of the Commonwealth to notify the Secretary of
32	the action; or
33	(b) the action is in a class of actions:
34 35	(i) that are specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or
36	an agency of a State or self-governing Territory; and

1 2		(ii) that the agreement or arrangement provides are to be notified to the Secretary by the agency.
3 4		Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
5	434	Subdivision D of Division 3 of Part 13
6		Repeal the Subdivision.
7 8 9	435	Subsection 236(5) (paragraphs (a) and (b) of the definition of <i>foreign whaling vessel</i>) Omit "whales", substitute "cetaceans".
10 11	436	Subsection 237(1) (note) Repeal the note.
12 13	437	Subsections 237(3), (4) and (5) Repeal the subsections, substitute:
14 15 16 17 18 19		 (3) As soon as practicable after receiving the application, the Minister must cause to be published on the Internet: (a) details of the application; and (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.
20 21 22 23 24 25		Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).
26	438	Subsection 238(1)
27		Omit "subsections (3) and (4)", substitute "subsections (3) to (4)".
28 29	439	Subsection 238(2) Omit ", 230, 232A, 232B, 233 and 234", substitute "and 230".
30	440	Paragraph 238(3)(c)
31	770	Repeal the paragraph, substitute:

1 2	(c) the specified action is whale watching (other than whale watching covered by paragraph 231(aa)) and:
3 4 5	(i) the whale watching is carried out in accordance with the regulations (if any) made for the purposes of this section; or
6 7 8 9	(ii) the whale watching will not adversely affect the conservation status of a species of cetacean or a population of that species, and is not inconsistent with a recovery plan or wildlife conservation plan that is in force for a species of cetacean.
11	441 Paragraphs 238(3)(d) and (e)
12	Repeal the paragraphs.
13	442 Subsection 238(3) (note)
14	Repeal the note.
15	443 After subsection 238(3)
16	Insert:
17 18 19 20	(3AA) If the specified action would or could relate to a species of cetacean that is a listed threatened species, the Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the species of cetacean.
21	444 Subsection 238(3A)
22	Repeal the subsection, substitute:
23 24	(3A) In making a decision on the application, the Minister must consider the comments (if any) received:
25 26 27	(a) in response to the invitation under subsection 237(3) for anyone to give the Minister comments on whether the permit should be issued; and
28	(b) within the period specified in the invitation.
29	445 Subsection 238(5) (definition of whale watching)
30	Repeal the definition, substitute:
31 32	whale watching means any activity conducted for the purpose of observing a cetacean, including but not limited to being in the

1 2	or otherwise interacting with a cetacean.
3	446 Section 243A
4	Before "An", insert "(1)".
5	447 Section 243A
6	Omit "An", substitute "Subject to subsection (2), an".
7	448 At the end of section 243A
8	Add:
9 10 11	(2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).
12	449 Section 245
13	Repeal the section, substitute:
14	245 Minister may accredit plans, regimes or policies
15 16	(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
17 18	(a) a plan of management within the meaning of section 17 of the <i>Fisheries Management Act 1991</i> ; or
19 20	(b) a plan of management within the meaning of section 15A of the <i>Torres Strait Fisheries Act 1984</i> ; or
21 22	(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
23	(i) made by a State or self-governing Territory; and
24	(ii) in force under a law of the State or self-governing
25	Territory; or
26	(d) a regime determined in writing by the Australian Fisheries
27	Management Authority under the Fisheries Administration
28 29	Act 1991 for managing a fishery for which a plan of management (within the meaning of section 17 of the
30	Fisheries Management Act 1991) is not in force; or
31	(e) a policy formulated by the Protected Zone Joint Authority
32	under paragraph 34(b) of the <i>Torres Strait Fisheries Act 1984</i>
33	for managing a fishery for which a plan of management

1 2		(within the meaning of section 15A of the <i>Torres Strait Fisheries Act 1984</i>) is not in force;
3		if the Minister is satisfied that:
4 5 6 7		(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and
8 9 10		(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species.
11 12		Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).
13 14 15 16		Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.
18		(2) An instrument under subsection (1) is not a legislative instrument.
19	450	Paragraph 254(1)(b)
20		Omit "marine".
21	451	Subsection 254(2)
22		Omit "paragraph (1)(d)", substitute "paragraphs (1)(c) and (d)".
23 24	Note:	The heading to section 254 is altered by omitting " Recklessly killing " and substituting " Killing ".
25	452	Paragraph 254B(1)(a)
26		Omit "marine".
27	453	Subsection 254B(2)
28		Omit "paragraph (1)(c)", substitute "paragraphs (1)(b) and (c)".
29 30	Note:	The heading to section 254 is altered by omitting " Recklessly taking " and substituting " Taking ".
31	454	Paragraph 254D(1)(a)
32		Omit "marine".
33	455	Subsection 254D(2)

1		Omit "par	agraph (1)(c)", substitute "paragraphs (1)(b) and (c)".
2	456	Subparag	graph 255(d)(ii)
3		Omit "ma	nagement plan that is an accredited management plan",
4			"management arrangement or an authorisation process that is
5			ited management arrangement or an accredited authorisation
6		process".	
7	457	After para	agraph 255(d)
8		Insert:	
9		(da)	an action that:
10			(i) is an action, or one of a class of actions, declared by the
11			Minister under section 37A not to require an approval
12			under Part 9 for the purposes of subsection 23(1) or (2),
13			24A(1), (2), (3) or (4), 26(1) or (2) or 27A(1), (2), (3) or
14			(4); and
15			(ii) is taken in accordance with the bioregional plan to
16		(11.)	which the declaration relates; or
17		(ab)	in the case of sections 254B, 254C, 254D and 254E—an
18 19			action that is trading, keeping or moving a member of a listed marine species, if:
20 21			(i) when the member of the species was taken, the species was not a listed marine species; and
22			(ii) the trading, keeping or moving of the member of the
23			species occurs during the period of 6 months that started
24			when the species became a listed marine species; or
25	458	At the en	d of section 255
26		Add:	
27		; or (1)	an action, to the extent that it is covered by subsection
28		, , ,	517A(7); or
29		(m)	an action provided for by, and done in accordance with, a
30			conservation agreement in force under Part 14; or
31		(n)	an action taken in a Commonwealth reserve in accordance
32		. ,	with a management plan made under Part 15 and in operation
33			for the reserve; or
34		(o)	an action provided for by, and taken in accordance with, a
35			traditional use of marine resources agreement that:

1 2		(i) was made and accredited in accordance with regulations made under the <i>Great Barrier Reef Marine Park Act</i>
3		1975; and
4		(ii) is in force; or
5		(p) an action that is taken in accordance with a permit that:
6		(i) was issued under the Antarctic Treaty (Environment
7 8		Protection) Act 1980 or under regulations made under that Act; and
9		(ii) is in force; or
10		(q) an action that consists of the transit of a member through a
11 12		Commonwealth area in circumstances where the member was:
13 14		(i) obtained from an area that is not a Commonwealth area; or
15		(ii) taken from a Commonwealth area in circumstances
16		covered by paragraph (a), (c), (d), (da), (db), (j), (k), (l),
17		(m), (n), (o) or (p).
18	459	Paragraph 256(1)(b)
19		After "or 254E", insert ", otherwise than because of paragraph
20		255(db)".
21	460	Subsection 256(4)
22		Repeal the subsection, substitute:
23		(4) Subsection (2) does not apply if:
24		(a) the person, or any other person or body, is required by or
25		under a law of the Commonwealth to notify the Secretary of
26		the action; or
27		(b) the action is in a class of actions:
28		(i) that is specified in an agreement or arrangement
29 30		between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
31		(ii) that the agreement or arrangement provides is to be
32		notified to the Secretary by the agency.
33 34		Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
35	461	Subsections 257(3), (4) and (5)
36		Repeal the subsections, substitute:

1		(3) As soon as practicable after receiving the application, the Minister
2		must cause to be published on the Internet:
3		(a) details of the application; and
4		(b) an invitation for anyone to give the Minister comments
5		within 10 business days (measured in Canberra) on whether
6		the permit should be issued.
7 8		Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the
9		and the referral is made at the same time as the application, the application and invitation for comments that must be published under
10		this subsection may be published together with the referral and
11 12		invitation for comments that must be published under subsection 74(3).
13	462	Subsection 258(4)
14		Repeal the subsection, substitute:
		•
15		(4) In making a decision on the application, the Minister must consider
16		the comments (if any) received:
17		(a) in response to the invitation under subsection 257(3) for
18		anyone to give the Minister comments on whether the permit
19		should be issued; and
20		(b) within the period specified in the invitation.
21	463	Section 263A
22		Before "An", insert "(1)".
23	464	Section 263A
24		Omit "An", substitute "Subject to subsection (2), an".
25	465	At the end of section 263A
26		Add:
27		(2) Subsection (1) does not apply to a decision made personally by the
28		Minister (but the subsection does apply to a decision made by a
29		delegate of the Minister).
30	466	Section 265
31		Repeal the section, substitute:
31		Repeat the section, substitute.

1	265 Minister may accredit plans, regimes or policies
2	(1) The Minister may, by instrument in writing, accredit for the
3	purposes of this Division:
4 5	(a) a plan of management within the meaning of section 17 of the <i>Fisheries Management Act 1991</i> ; or
6 7	(b) a plan of management within the meaning of section 15A of the <i>Torres Strait Fisheries Act 1984</i> ; or
8 9	(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
	· ·
10	(i) made by a State or self-governing Territory; and
11 12	(ii) in force under a law of the State or self-governing Territory; or
13	(d) a regime determined in writing by the Australian Fisheries
14	Management Authority under the Fisheries Administration
15	Act 1991 for managing a fishery for which a plan of
16	management (within the meaning of section 17 of the
17	Fisheries Management Act 1991) is not in force; or
18	(e) a policy formulated by the Protected Zone Joint Authority
19	under paragraph 34(b) of the Torres Strait Fisheries Act 1984
20	for managing a fishery for which a plan of management
21	(within the meaning of section 15A of the <i>Torres Strait</i>
22	Fisheries Act 1984) is not in force;
23	if the Minister is satisfied that:
24	(f) the plan, regime or policy requires persons engaged in fishing
25	under the plan, regime or policy to take all reasonable steps
26	to ensure that members of listed marine species are not killed
27	or injured as a result of the fishing; and
28	(g) the fishery to which the plan, regime or policy relates does
29	not, or is not likely to, adversely affect the conservation
30	status of a listed marine species or a population of that
31	species.
32 33	Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).
34	Note 2: If a plan, regime or policy that is accredited under this section is, or is
35	proposed to be, amended, the Minister may determine under
36	section 303AB that the plan, regime or policy as amended is, for the
37	purposes of this Act, taken to be accredited under subsection (1) of this section.
38	uns section.
39	(2) An instrument under subsection (1) is not a legislative instrument.

468 Division 5 of Part 13 (heading) Repeal the heading, substitute: Division 5—Conservation advice, recovery plans, threat abatement plans and wildlife conservation plans 469 Before Subdivision A of Division 5 of Part 13 Insert: Subdivision AA—Approved conservation advice 266B Approved conservation advice for listed threatened species and listed threatened ecological communities Minister to ensure there is approved conservation advice (1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extin or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species community continues to be listed. (2) For this purpose, approved conservation advice is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains: (a) a statement that sets out: (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and (ii) the main factors that are the cause of it being so eligible and (b) either:	1 2	467 Division 4A of Part 13 Repeal the Division.
469 Before Subdivision A of Division 5 of Part 13 Insert: Subdivision AA—Approved conservation advice 266B Approved conservation advice for listed threatened species and listed threatened ecological communities Minister to ensure there is approved conservation advice (1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extin or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species of community continues to be listed. (2) For this purpose, approved conservation advice is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains: (a) a statement that sets out: (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and (b) either: (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the		468 Division 5 of Part 13 (heading)
Subdivision AA—Approved conservation advice 266B Approved conservation advice for listed threatened species and listed threatened ecological communities Minister to ensure there is approved conservation advice (1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extin or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species community continues to be listed. (2) For this purpose, approved conservation advice is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains: (a) a statement that sets out: (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and (ii) the main factors that are the cause of it being so eligible and (b) either: (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the		Division 5—Conservation advice, recovery plans, threat abatement plans and wildlife conservation plans
266B Approved conservation advice for listed threatened species and listed threatened ecological communities Minister to ensure there is approved conservation advice (1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extin or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species community continues to be listed. (2) For this purpose, approved conservation advice is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains: (a) a statement that sets out: (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and (ii) the main factors that are the cause of it being so eligible and (b) either: (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the		
and listed threatened ecological communities Minister to ensure there is approved conservation advice (1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extin or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species of community continues to be listed. (2) For this purpose, approved conservation advice is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains: (a) a statement that sets out: (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and (ii) the main factors that are the cause of it being so eligible and (b) either: (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the	9	Subdivision AA—Approved conservation advice
(1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extin or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species of community continues to be listed. (2) For this purpose, approved conservation advice is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains: (a) a statement that sets out: (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and (ii) the main factors that are the cause of it being so eligible and (b) either: (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the		
advice for each listed threatened species (except one that is extin or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species of community continues to be listed. (2) For this purpose, <i>approved conservation advice</i> is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains: (a) a statement that sets out: (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and (ii) the main factors that are the cause of it being so eligible and (b) either: (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the	12	Minister to ensure there is approved conservation advice
approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains: (a) a statement that sets out: (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and (ii) the main factors that are the cause of it being so eligible and (b) either: (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the	14 15 16	advice for each listed threatened species (except one that is extinct or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species or
(i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and (ii) the main factors that are the cause of it being so eligible and (b) either: (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the	19 20	approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains:
26 and 27 (b) either: 28 (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the	22 23	(i) the grounds on which the species or community is eligible to be included in the category in which it is
(i) information about what could appropriately be done to stop the decline of, or support the recovery of, the		
	28 29	(i) information about what could appropriately be done to stop the decline of, or support the recovery of, the

1 2 3	(ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community.
4	Changing approved conservation advice
5 6	(3) The Minister may, in writing, approve changes to approved conservation advice.
7	Consultation with Scientific Committee
8 9 10 11 12	(4) If the Minister proposes to approve a document as approved conservation advice, the Minister must consult the Scientific Committee about the document, unless its content is substantially the same as material that the Committee has previously provided to the Minister.
13 14 15 16 17	(5) If the Minister proposes to approve a change to approved conservation advice, the Minister must consult the Scientific Committee about the change, unless the change is substantially the same as a change that the Scientific Committee has previously advised the Minister should be made.
18	Publication requirements
19 20 21 22 23 24	 (6) If the Minister approves a document as approved conservation advice, the Minister must: (a) within 10 days of the approval of the document, publish the approved conservation advice on the Internet; and (b) comply with any other publication requirements of the regulations.
25 26 27 28 29 30	 (7) If the Minister approves a change to approved conservation advice, the Minister must: (a) within 10 days of the approval of the change, publish the advice, as changed, on the Internet; and (b) comply with any other publication requirements of the regulations.
31	Instruments of approval are not legislative instruments
32 33	(8) An instrument of approval under subsection (2) or (3) is not a legislative instrument.

1	470 Section 267
2	Omit:
3 4	The Minister must ensure that a recovery plan is in force for each listed threatened species and ecological community.
5	substitute:
6 7 8 9 10	The Minister need ensure that a recovery plan is in force for a listed threatened species or ecological community only if the Minister decides to have a recovery plan. The Minister must decide whether to have a recovery plan for the species or community within 90 days after it becomes listed. The Minister may, at any other time, decide whether to have such a plan.
12	471 After section 269
13	Insert:
14	269AA Decision whether to have a recovery plan
15	Minister has an initial obligation and then a discretion
16 17 18 19 20 21	(1) The Minister must decide whether to have a recovery plan for a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community within 90 days after the species or community becomes listed. The Minister may, at any other time, decide whether to have a recovery plan for the species or community.
22 23 24 25 26	 (2) In this section: (a) the decision that the Minister is required by subsection (1) to make in relation to the species or community within the 90 day period referred to in that subsection is the <i>initial recovery plan decision</i>; and
27 28 29	(b) any subsequent decision that the Minister makes under subsection (1) in relation to the species or community is a <i>subsequent recovery plan decision</i> .

1	Making the initial recovery plan decision
2 3	(3) In making the initial recovery plan decision, the Minister must have regard to the recommendation (the <i>initial recommendation</i>)
4 5	made by the Scientific Committee as mentioned in paragraph 189(1A)(c) in relation to the species or community.
6 7	Making a subsequent recovery plan decision (unless subsection (5) applies)
8 9 10 11 12	 (4) In making a subsequent recovery plan decision in relation to the species or community, other than a decision to which subsection (5) applies: (a) the Minister must have regard to the initial recommendation in relation to the species or community; and (b) the Minister must have regard to any advice subsequently
14 15 16	provided to the Minister by the Scientific Committee about whether there should be a recovery plan for the species or community.
17 18	Changing from a decision to have a recovery plan to a decision not to have a recovery plan—additional requirements
19 20 21 22 23	(5) If, at a time when a decision to have a recovery plan for the species or community is in force (whether or not the plan has yet been made), the Minister is proposing to make a subsequent recovery plan decision that there should not be a recovery plan for the species or community:
24 25	(a) the Minister must ask the Scientific Committee for advice relating to the proposed decision; and
26 27	(b) the Minister must publish a notice inviting comments on the proposed decision in accordance with subsection (7); and
28 29	(c) the Minister must, in deciding whether to make the proposed decision, take account of:
30 31	(i) any advice provided by the Scientific Committee in relation to the proposed decision; and
32 33 34	(ii) subject to subsection (6), the comments the Minister receives in response to the notice referred to in paragraph (b).
35 36	(6) The Minister is not required to take a comment referred to in subparagraph (5)(c)(ii) into account if:

1 2	cut-off date specified in the notice under paragraph (5)(b); or
3	(b) the Minister considers that regulations referred to in
4	paragraph (8)(b) have not been complied with in relation to
5	the comment.
6	(7) The notice referred to in paragraph (5)(b):
7 8	(a) must be published in accordance with the regulations referred to in paragraph (8)(a); and
9	(b) must set out the decision the Minister proposed to make; and
10	(c) must invite people to make comments, to the Minister, about
11	the proposed decision; and
12	(d) must specify the date (the <i>cut-off date</i>) by which comments
13	must be received, which must be at least 30 business days
14	after the notice has been published as required by
15	paragraph (a); and
16	(e) must specify, or refer to, the manner and form requirements
17	that, under regulations referred to in paragraph (8)(b), apply
18	to making comments; and
19	(f) may also include any other information that the Minister
20	considers appropriate.
21	(8) The regulations must provide for the following:
22	(a) how a notice referred to in paragraph (5)(b) is to be
23	published;
24	(b) the manner and form for making comments.
25	General publication requirements
26	(9) The Minister must publish the following:
27	(a) the Minister's initial recovery plan decision, and the reasons
28	for it;
29	(b) each subsequent recovery plan decision (if any), and the
30	reasons for it.
31	The regulations may specify how the publication is to be made.
32	Subject to any such regulations, the publication must be made in a
33	way that the Minister considers appropriate.
34	Note: This subsection must be complied with, even if the Minister has
35	already published notice of the proposed decision in accordance with
36	subsections (5) and (7).

1		Decisions not legislative instruments
2 3		(10) An instrument making a decision under subsection (1) is not a legislative instrument.
4	472	Subsection 269A(1)
5		Repeal the subsection, substitute:
6		Application
7 8 9 10		(1) This section applies only if the Minister's most recent decision under section 269AA in relation to a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community is to have a recovery plan for the species or community.
12 13 14		Note: Subsection 273(1) sets a deadline of 3 years from the decision for ensuring that a recovery plan is in force for the species or community. Subsection 273(2) allows that period to be extended.
15	473	Subsection 269A(2) (note)
16		Repeal the note.
17	474	Subsection 269A(3)
18		After "community jointly with", insert "one or more of".
19	475	Subsection 269A(3)
20		After "agencies of", insert "one or more of".
21	476	Paragraph 269A(5)(a)
22 23		After "occurs,", insert "and in which actions that the plan would provide for would occur,".
24	477	Subsection 269A(6)
25		Repeal the subsection, substitute:
26		Limits on making a plan
27 28 29		(6) The Minister must not make a recovery plan under subsection (2) for a species or ecological community that occurs wholly or partly outside a Commonwealth area unless the Minister is satisfied that it is not reasonably practicable, within the period of 3 years referred
30		is not reasonably practicable, within the period of 3 years referred

3		(a) in which the species or community occurs; and(b) in which actions that the plan would provide for would occur,
5		if the plan were made under subsection (2) of this section.
6	478	Subsection 270(2)
7		After "a recovery plan must", insert "(subject to subsection (2A))".
8	479	After subsection 270(2)
9		Insert:
10		(2A) A recovery plan need only address the matters mentioned in
11 12		paragraphs (2)(d), (e), (f), (g) and (h) to the extent to which it is practicable to do so.
12		practicable to do so.
13	480	Paragraphs 271(2)(d) to (f)
14		Repeal the paragraphs.
15	481	At the end of section 271
-		
16		Add:
		Add: (4) A threat abatement plan may:
16		(4) A threat abatement plan may:(a) state the estimated duration and cost of the threat abatement
16 17 18 19		(4) A threat abatement plan may:(a) state the estimated duration and cost of the threat abatement process; and
16 17 18 19 20		(4) A threat abatement plan may:(a) state the estimated duration and cost of the threat abatement process; and(b) identify organisations or persons who will be involved in
16 17 18 19 20 21		 (4) A threat abatement plan may: (a) state the estimated duration and cost of the threat abatement process; and (b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and
16 17 18 19 20		 (4) A threat abatement plan may: (a) state the estimated duration and cost of the threat abatement process; and (b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and (c) specify any major ecological matters (other than the species
16 17 18 19 20 21 22		 (4) A threat abatement plan may: (a) state the estimated duration and cost of the threat abatement process; and (b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and (c) specify any major ecological matters (other than the species or communities threatened by the key threatening process
16 17 18 19 20 21 22 23		 (4) A threat abatement plan may: (a) state the estimated duration and cost of the threat abatement process; and (b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and (c) specify any major ecological matters (other than the species
16 17 18 19 20 21 22 23 24		 (4) A threat abatement plan may: (a) state the estimated duration and cost of the threat abatement process; and (b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and (c) specify any major ecological matters (other than the species or communities threatened by the key threatening process that is the subject of the plan) that will be affected by the plan's implementation. (5) Subsection (4) does not limit the matters that a threat abatement
16 17 18 19 20 21 22 23 24 25		 (4) A threat abatement plan may: (a) state the estimated duration and cost of the threat abatement process; and (b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and (c) specify any major ecological matters (other than the species or communities threatened by the key threatening process that is the subject of the plan) that will be affected by the plan's implementation.
16 17 18 19 20 21 22 23 24 25	482	 (4) A threat abatement plan may: (a) state the estimated duration and cost of the threat abatement process; and (b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and (c) specify any major ecological matters (other than the species or communities threatened by the key threatening process that is the subject of the plan) that will be affected by the plan's implementation. (5) Subsection (4) does not limit the matters that a threat abatement

1		Deadline for recovery plan
2 3 4 5		(1) Subject to subsection (2), a recovery plan for a listed threatened species or a listed threatened ecological community must be made and in force within 3 years of the decision under section 269AA to have the plan.
6 7 8 9		(2) The Minister may, in writing, extend the period within which a recovery plan must be made. Only one extension can be granted for the making of the plan, and the period of the extension must not be more than 3 years.
10		Ensuring recovery plan is in force
11 12 13 14 15		(3) Once the first recovery plan for a listed threatened species or a listed threatened ecological community is in force, the Minister must exercise his or her powers under this Subdivision to ensure that a recovery plan is in force for the species or community until the Minister decides under section 269AA not to have a recovery plan for the species or community.
17 18 19 20		Note: The Minister may revoke a recovery plan for a listed threatened species or a listed threatened ecological community if the Minister decides under section 269AA not to have a recovery plan for the species or community. See section 283A.
21	Note:	The heading to section 278 is altered by omitting ", review and variation".
22	483	Subsection 283A(1)
23		Repeal the subsection, substitute:
24 25 26 27 28 29 30 31		 (1) The Minister may, by legislative instrument: (a) revoke a recovery plan for a listed threatened species or a listed threatened ecological community if the Minister decides under section 269AA not to have a recovery plan for the species or community; or (b) revoke a threat abatement plan for a key threatening process if the Minister decides under section 270A not to have a threat abatement plan for the process.
32	Note:	The heading to section 283A is altered by omitting "threat abatement".
33	484	Paragraph 283A(2)(a)
34		Omit "threat abatement".

1	485 Section 299
2	Omit "a recovery plan takes effect for the species", substitute "the
3	species becomes a listed threatened species as mentioned in
4	paragraph (b)".
5	486 At the end of Subdivision C of Division 5 of Part 13
6	Add:
7	300B Assistance from the Scientific Committee
8 9	(1) The Minister may, at any time, ask the Scientific Committee to provide the Minister with a statement, information or advice for the
10 11 12	purpose of assisting the Minister in the performance or exercise of the Minister's functions or powers under section 266B, 269AA or 270A.
10	(2) The Scientific Committee may at any time mayide the Minister
13 14	(2) The Scientific Committee may, at any time, provide the Minister with a statement, information or advice for the purpose of assisting
15	the Minister in the performance or exercise of the Minister's
16	functions or powers under section 266B, 269AA or 270A (whether
17 18	or not the Committee is acting in response to a request under subsection (1) of this section).
19	487 At the end of Division 8 of Part 13
20	Add:
21 22	303AA Conditions relating to accreditation of plans, regimes and policies
23 24	(1) This section applies to an accreditation of a plan, regime or policy under section 208A, 222A, 245 or 265.
25	(2) The Minister may accredit a plan, regime or policy under that
26	section even though he or she considers that the plan, regime or
27	policy should be accredited only:
28	(a) during a particular period; or
29	(b) while certain circumstances exist; or
30	(c) while a certain condition is complied with.
31	In such a case, the instrument of accreditation is to specify the
32	period, circumstances or condition.

1 2 3	(3) If an accreditation specifies a particular period as mentioned in subsection (2), the accreditation ceases to be in force at the end of that period.
4 5 6 7	(4) If an accreditation specifies circumstances as mentioned in subsection (2), the Minister must, in writing, revoke the accreditation if he or she is satisfied that those circumstances have ceased to exist.
8 9 10 11 12	 (5) The Minister may, in writing, vary an accreditation by: (a) specifying one or more conditions (or further conditions) to which the accreditation is subject; or (b) revoking or varying a condition: (i) specified in the instrument of accreditation; or (ii) specified under paragraph (a).
14	(6) A condition may relate to reporting or monitoring.
15 16 17	(7) The Minister must, in writing, revoke an accreditation if he or she is satisfied that a condition of the accreditation has been contravened.
18 303A	AB Amended policies, regimes or plans taken to be accredited
18 303 A	AB Amended policies, regimes or plans taken to be accredited (1) If:
19 20 21 22	 (1) If: (a) a plan, regime or policy is accredited under section 208A, 222A, 245 or 265; and (b) the plan, regime or policy is amended, or is proposed to be
19 20 21 22 23 24	 (1) If: (a) a plan, regime or policy is accredited under section 208A, 222A, 245 or 265; and (b) the plan, regime or policy is amended, or is proposed to be amended; and (c) the Minister is satisfied that the amendments are, or will be,
19 20 21 22 23 24 25 26 27	 (1) If: (a) a plan, regime or policy is accredited under section 208A, 222A, 245 or 265; and (b) the plan, regime or policy is amended, or is proposed to be amended; and (c) the Minister is satisfied that the amendments are, or will be, minor; and (d) the Minister is satisfied that the plan, regime or policy as amended meets, or will meet, the requirements of subsection
19 20 21 22 23 24 25 26	 (1) If: (a) a plan, regime or policy is accredited under section 208A, 222A, 245 or 265; and (b) the plan, regime or policy is amended, or is proposed to be amended; and (c) the Minister is satisfied that the amendments are, or will be, minor; and (d) the Minister is satisfied that the plan, regime or policy as
19 20 21 22 23 24 25 26 27 28	 (1) If: (a) a plan, regime or policy is accredited under section 208A, 222A, 245 or 265; and (b) the plan, regime or policy is amended, or is proposed to be amended; and (c) the Minister is satisfied that the amendments are, or will be, minor; and (d) the Minister is satisfied that the plan, regime or policy as amended meets, or will meet, the requirements of subsection 208A(1), 222A(1), 245(1) or 265(1) (as the case may be); the Minister may, by instrument in writing, determine that this

1 2		(3) A determination under subsection (1) of this section is not a legislative instrument.
3	488	Subsection 303CG(2)
4		After "specified in the permit", insert ", in the permitted period,".
5	489	After subsection 303CG(2)
6		Insert:
7 8 9		(2A) For the purpose of subsection (2), the <i>permitted period</i> is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so
10 11		specified must start on the date of issue of the permit and end not later than 6 months after that date.
12	490	Section 303CH
13		Before "The following", insert "(1)".
14 15	491	Section 303CH (paragraph (a) in the cell at table item 3, column headed "Specific conditions")
16		Before "the country", insert "for any specimen—".
17 18	492	Section 303CH (paragraph (b) in the cell at table item 3, column headed "Specific conditions")
19		Repeal the paragraph, substitute:
		 (b) for a specimen that: (i) is specified by the Minister in a notice published in the <i>Gazette</i> to be a declared specimen; and (ii) is not, or is not derived from, an animal that was bred in captivity (section 527B); and (iii) is not, or is not derived from, a plant that was artificially propagated (section 527C);
		the proposed import of the specimen would be an import from an approved commercial import program in accordance with section 303FU.

Insert: (iia) an export from an approved cultivation program in accordance with section 303FLA; or 495 At the end of section 303CH Add: (2) A notice made under subparagraph (b)(i) of item 3 in the following subsection (1) is not a legislative instrument. 496 Paragraph 303CJ(b) Repeal the paragraph, substitute: (b) unless it is sooner cancelled, remains in force until a following periods have ended: (i) the permitted period (within the meaning of sul 303CG(2A)); (ii) each period for which one or more conditions of permit are expressed to apply. 497 After paragraph 303DB(6)(a) Insert: (aa) the Minister has had regard to any approved conserved advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (3), (4A)".	1 493 2	section 303CH (after subparagraph (b)(ii) in the cell at table item 4, column headed "Specific conditions")
table item 6, column headed "Specific conditions Insert: (iia) an export from an approved cultivation program in accordance with section 303FLA; or 495 At the end of section 303CH Add: (2) A notice made under subparagraph (b)(i) of item 3 in the foliation subsection (1) is not a legislative instrument. 496 Paragraph 303CJ(b) Repeal the paragraph, substitute: (b) unless it is sooner cancelled, remains in force until a following periods have ended: (i) the permitted period (within the meaning of sul 303CG(2A)); (ii) each period for which one or more conditions of permit are expressed to apply. 497 After paragraph 303DB(6)(a) Insert: (aa) the Minister has had regard to any approved conserved advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (4A)". 499 Subsection 303DG(2)	3	(iia) an export from an approved cultivation program in accordance
(iia) an export from an approved cultivation program in accordance with section 303FLA; or 495 At the end of section 303CH Add: (2) A notice made under subparagraph (b)(i) of item 3 in the formula subsection (1) is not a legislative instrument. 496 Paragraph 303CJ(b) Repeal the paragraph, substitute: (b) unless it is sooner cancelled, remains in force until a following periods have ended: (i) the permitted period (within the meaning of substitute) (ii) each period for which one or more conditions of permit are expressed to apply. 497 After paragraph 303DB(6)(a) Insert: (aa) the Minister has had regard to any approved conserved advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (4A)". 499 Subsection 303DG(2)		Section 303CH (after subparagraph (b)(ii) in the cell at table item 6, column headed "Specific conditions")
Add: (2) A notice made under subparagraph (b)(i) of item 3 in the following paragraph 303CJ(b) Repeal the paragraph, substitute: (b) unless it is sooner cancelled, remains in force until a following periods have ended: (i) the permitted period (within the meaning of substitute and substitute) (ii) each period for which one or more conditions of permit are expressed to apply. 497 After paragraph 303DB(6)(a) Insert: (aa) the Minister has had regard to any approved conserved advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (4A)". 499 Subsection 303DG(2)	6	(iia) an export from an approved cultivation program in accordance
(2) A notice made under subparagraph (b)(i) of item 3 in the subsection (1) is not a legislative instrument. 496 Paragraph 303CJ(b) Repeal the paragraph, substitute: (b) unless it is sooner cancelled, remains in force until a following periods have ended: (i) the permitted period (within the meaning of subsection of the permit are expressed to apply. 497 After paragraph 303DB(6)(a) Insert: (aa) the Minister has had regard to any approved conserved advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (24A)". 499 Subsection 303DG(2)	7 495	At the end of section 303CH
subsection (1) is not a legislative instrument. 496 Paragraph 303CJ(b) Repeal the paragraph, substitute: (b) unless it is sooner cancelled, remains in force until a following periods have ended: (i) the permitted period (within the meaning of substitute) (ii) each period for which one or more conditions of permit are expressed to apply. 497 After paragraph 303DB(6)(a) Insert: (aa) the Minister has had regard to any approved conserved advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (4A)". 499 Subsection 303DG(2)	8	Add:
Repeal the paragraph, substitute: (b) unless it is sooner cancelled, remains in force until a following periods have ended: (i) the permitted period (within the meaning of substitute) (ii) each period for which one or more conditions of permit are expressed to apply. 497 After paragraph 303DB(6)(a) Insert: (aa) the Minister has had regard to any approved conserved advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (4A)". 499 Subsection 303DG(2)		(2) A notice made under subparagraph (b)(i) of item 3 in the table in subsection (1) is not a legislative instrument.
(b) unless it is sooner cancelled, remains in force until a following periods have ended: (i) the permitted period (within the meaning of subsections (3), (3A) and (4)", substitute "subsections (2) (4A)".	496	Paragraph 303CJ(b)
following periods have ended: (i) the permitted period (within the meaning of subsections (3) (2) (ii) each period for which one or more conditions of permit are expressed to apply. 497 After paragraph 303DB(6)(a) Insert: (aa) the Minister has had regard to any approved conserved advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (4A)". 499 Subsection 303DG(2)	12	Repeal the paragraph, substitute:
303CG(2A)); (ii) each period for which one or more conditions of permit are expressed to apply. 497 After paragraph 303DB(6)(a) Insert: (aa) the Minister has had regard to any approved conservadvice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (3), (4A)". 499 Subsection 303DG(2)		(b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
permit are expressed to apply. 497 After paragraph 303DB(6)(a) Insert: (aa) the Minister has had regard to any approved conserved advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (4A)". 499 Subsection 303DG(2)		(i) the permitted period (within the meaning of subsection 303CG(2A));
Insert: (aa) the Minister has had regard to any approved conserved advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (3), (4A)". 499 Subsection 303DG(2)		(ii) each period for which one or more conditions of the permit are expressed to apply.
(aa) the Minister has had regard to any approved conserved advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (4A)". 499 Subsection 303DG(2)	19 497	After paragraph 303DB(6)(a)
advice for that species; and 498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (3), (4A)". 499 Subsection 303DG(2)	20	Insert:
498 Subsection 303DG(1) Omit "subsections (3), (3A) and (4)", substitute "subsections (3), (4A)". 499 Subsection 303DG(2)	21	(aa) the Minister has had regard to any approved conservation
Omit "subsections (3), (3A) and (4)", substitute "subsections (3, (4A)". 499 Subsection 303DG(2)	22	advice for that species; and
25 (4A)". 26 499 Subsection 303DG(2)	498	Subsection 303DG(1)
26 499 Subsection 303DG(2)	24	Omit "subsections (3), (3A) and (4)", substitute "subsections (3) to
` ,	25	(4A)".
After "specified in the permit", insert ", in the permitted period	499	Subsection 303DG(2)
	27	After "specified in the permit", insert ", in the permitted period,".

1	500	After subsection 303DG(2)
2		Insert:
3 4 5 6 7		(2A) For the purpose of subsection (2), the <i>permitted period</i> is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 3 years after that date.
8	501	After subsection 303DG(4)
9		Insert:
10 11 12 13		(4A) If the Minister is considering whether to issue a permit relating to a specimen that belongs to a particular eligible listed threatened species, the Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the species.
14	502	After paragraph 303DG(7)(b)
15		Insert:
16		(ba) the export of the specimen would be an export from an
17 18		approved cultivation program in accordance with section 303FLA; or
19	503	Paragraph 303DI(b)
20		Repeal the paragraph, substitute:
21		(b) unless it is sooner cancelled, remains in force until all of the
22		following periods have ended:
23 24		(i) the permitted period (within the meaning of subsection 303DG(2A));
25		(ii) each period for which one or more conditions of the
26		permit are expressed to apply.
27	504	Subsection 303EB(7)
28		After "Part 2 of the list", insert "(except a specimen referred to in
29		subsection (11A))".
30	505	After subsection 303EB(11)
31		Insert:
32		(11A) Part 2 of the list is taken to include a live plant that:

1		(a) is a CITES specimen; and
2		(b) is introduced into Australia in accordance with the
3		Quarantine Act 1908.
4	506	Subsections 303ED(2), (3) and (4)
5		Repeal the subsections, substitute:
6		(2) Unless subsection (3) applies, the Minister must:
7		(a) cause to be conducted an assessment of the potential impacts
8		on the environment of the proposed amendment; and
9		(b) cause to be prepared a report on those impacts.
10		The report must be prepared in accordance with section 303EF and
11		be given to the Minister.
12		(3) This subsection applies if:
13		(a) Biosecurity Australia has prepared a report (whether before
14		or after the amendment was proposed) on the potential
15		impacts on the environment if the specimen were to be
16		imported; and
17		(b) the report is of a type specified in regulations made for the
18		purposes of this paragraph; and
19		(c) the report is given to the Minister; and
20 21		(d) the Minister determines that subsection (2) does not apply to the proposed amendment.
22 23		(4) A determination made under paragraph (3)(d) is not a legislative instrument.
24	507	Subsection 303EE(2)
25		Repeal the subsection, substitute:
26		(2) The Minister must not consider the application unless either
27		subsection (3) or (4) applies to the proposed amendment.
28		(3) This subsection applies to the proposed amendment if:
29		(a) subsection (4) does not apply to the proposed amendment;
30		and
31		(b) an assessment is made of the potential impacts on the
32		environment of the proposed amendment; and
33		(c) a report on those impacts is given to the Minister.
34		The report must be prepared in accordance with section 303EF.

1	(4) This subsection applies to the proposed amendment if:
2	(a) Biosecurity Australia has prepared a report (whether before
3	or after the amendment was proposed) on the potential
4 5	impacts on the environment if the specimen were to be imported; and
6	(b) the report is of a type specified in regulations made for the
7	purposes of this paragraph; and
8	(c) the report has been given to the Minister; and
9	(d) the Minister determines that subsection (3) does not apply to
10	the proposed amendment.
11 12	(5) A determination made under paragraph (4)(d) is not a legislative instrument.
13	508 Section 303EF
14	Repeal the section, substitute:
	•
15	303EF Requirement for assessments
16	(1) The assessment under subsection 303ED(2) or 303EE(3) must
17	provide for:
18	(a) if the Minister determines that this paragraph applies—the
19	preparation of terms of reference for a report on the relevant
20	impacts; or
21 22	(b) if the Minister determines that this paragraph applies—all of the following:
23	(i) the preparation of draft terms of reference for a report
24	on the relevant impacts;
25	(ii) the publication of the draft terms of reference for public
26	comment for a period of at least 10 business days that is
27	specified by the Minister;
28	(iii) the finalisation of the terms of reference, to the
29	Minister's satisfaction, taking into account the
30	comments (if any) received on the draft terms of
31	reference.
32	(2) The assessment must also provide for:
33	(a) the preparation of a draft of a report on the relevant impacts;
34	and

1 2		(b) the publication of the draft report for public comment for a period of at least 20 business days that is specified by the
3		Minister; and
4		(c) the finalisation of the report, taking into account the
5		comments (if any) received after publication of the draft
6		report; and
7		(d) any other matter prescribed by the regulations.
8 9		(3) A determination made under paragraph (1)(a) or (b) is not a legislative instrument.
10	509	Subsection 303EN(2)
11		After "specified in the permit", insert ", in the permitted period,".
12	510	After subsection 303EN(2)
13		Insert:
14		(2A) For the purpose of subsection (2), the <i>permitted period</i> is the
15		period specified in the permit as the period during which the action
16		or actions specified in the permit may be taken. The period so
17 18		specified must start on the date of issue of the permit and end not later than 3 years after that date.
19	511	Paragraph 303EP(b)
20		Repeal the paragraph, substitute:
21 22		(b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
23 24		(i) the permitted period (within the meaning of subsection 303EN(2A));
25 26		(ii) each period for which one or more conditions of the permit are expressed to apply.
27	512	After paragraph 303FJ(b)
28		Insert:
29		(ba) the export of the specimen would be an export from an
30		approved cultivation program in accordance with
31		section 303FLA; or
32	513	After section 303FL
33		Insert:

1	303F	LA Export from an approved cultivation program
2 3 4 5		The export of a specimen is an export from an approved cultivation program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved cultivation program.
6	514	Subsection 303GB(2)
7		After "specified in the permit", insert ", in the permitted period,".
8	515	After subsection 303GB(2) Insert:
10 11 12 13 14 15 16		 (2A) For the purpose of subsection (2), the <i>permitted period</i> is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than: (a) if the permit relates to a CITES specimen—6 months after that date; or
17 18		(b) if the permit relates to a specimen other than a CITES specimen—12 months after that date.
19	516	Subsections 303GB(3) and (4)
20		Repeal the subsections, substitute:
21		Duration of permit
22		(3) A permit under this section:
23		(a) comes into force on the date on which it is issued; and
24		(b) unless it is sooner cancelled, remains in force until all of the
25		following periods have ended:
26		(i) the permitted period (within the meaning of
27		subsection (2A)); (ii) each period for which one or more conditions of the
28 29		permit are expressed to apply.
30	517	Subsection 303GC(3)
31		After "specified in the permit", insert ", in the permitted period,".
32	518	After subsection 303GC(3)

1		Insert:
2 3 4 5 6		(3A) For the purpose of subsection (3), the <i>permitted period</i> is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 12 months after that date.
7	519	Paragraph 303GC(6)(b)
8		Repeal the paragraph, substitute:
9		(b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
1 1 2		(i) the permitted period (within the meaning of subsection (3A));
13		(ii) each period for which one or more conditions of the permit are expressed to apply.
15	520	Subsection 303GD(6)
16		After "specified in the permit", insert ", in the permitted period,".
17	521	After subsection 303GD(6)
18		Insert:
19 20 21 22 23		(6A) For the purpose of subsection (6), the <i>permitted period</i> is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 6 months after that date.
24	522	Paragraph 303GD(7)(d)
25		Repeal the paragraph, substitute:
26		(d) if an assessment is to be made under subsection 303EE(3) of
27		the potential impacts on the environment of the proposed
28 29		amendment—the terms of reference for a report on the assessment have been:
80		(i) prepared as mentioned in paragraph 303EF(1)(a); or
31 32		(ii) finalised as mentioned in subparagraph 303EF(1)(b)(iii); and
33	523	Paragraph 303GD(9)(b)

1		Repeal the paragraph, substitute:			
2 3		(b) unless it is sooner cancelled, remains in force until all of the following periods have ended:			
4 5		(i) the permitted period (within the meaning of subsection (6A));			
6 7		(ii) each period for which one or more conditions of the permit are expressed to apply.			
8	524	After subsection 303GE(5)			
9		Insert:			
10 11 12		(5A) Without limiting subsection (5), a condition of a permit may be expressed to apply for a period that will not end until after the export or import of a specimen under the permit has occurred, including for example:			
13 14 15 16		(a) a period the length of which is known when the condition is imposed (such as a period that is expressed as a specified number of years); or			
17 18 19		(b) a period the length of which is unknown when the condition is imposed (such as a period that is expressed as the life of the specimen, or the life of progeny of the specimen).			
20 21		Note: Conditions may, for example, relate to how a specimen, and its progeny, are kept or dealt with during their lifetimes.			
22	525	Subsection 303GE(6)			
23 24		Omit "subsection (5) applies", substitute "subsections (5) and (5A) apply".			
25	526	Subsection 303GE(6)			
26		Omit "it applies", substitute "they apply".			
27 28	527	Subsection 303GE(7) After "(5)", insert ", (5A)".			
29 30	528	Subsection 303GJ(1) Omit "An", substitute "Subject to subsection (2), an".			
31 32	529	Subsection 303GJ(1) Omit "Tribunal", substitute "Administrative Appeals Tribunal".			

1	530 After subsection 303GJ(1)
2	Insert:
3 4 5	(2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).
6	531 Subsection 303GJ(3) (definition of <i>Tribunal</i>)
7	Repeal the definition.
8	532 Section 304
9	Repeal the section, substitute:
10	304 Object of this Part
11	(1) The object of this Part is to provide for:
12	(a) conservation agreements between the Commonwealth and
13	persons related to the protection and conservation of the
14	following:
15	(i) biodiversity;
16 17	(ii) the world heritage values of declared World Heritage properties;
18	(iii) the National Heritage values of National Heritage
19	places;
20 21	(iv) the Commonwealth Heritage values of Commonwealth Heritage places;
22	(v) the ecological character of a declared Ramsar wetland;
23	(vi) the environment, in respect of the impact of a nuclear
24	action;
25	(vii) the environment in a Commonwealth marine area;
26	(viii) the environment on Commonwealth land; and
27	(b) the effect of conservation agreements; and
28	(c) the publication of conservation agreements.
29	(2) Conservation agreements are agreements whose primary object is
30	to enhance the conservation of matters referred to in
31	paragraph (1)(a). They may relate to private or public land, or to
32	marine areas.
33 34	Note: Conservation agreements cannot cover all or part of a Commonwealth reserve (see subsection 305(4)).

1	533	Paragraph 305(1)(c)
2		Omit "(whether inside or outside the Australian jurisdiction)".
3	534	At the end of subsection 305(1)
4		Add:
5 6		; (e) the ecological character of a declared Ramsar wetland in the Australian jurisdiction;
7 8		(f) the environment, in respect of the impact of a nuclear action in the Australian jurisdiction;
9		(g) the environment in a Commonwealth marine area in the Australian jurisdiction;
1 2		(h) the environment on Commonwealth land in the Australian jurisdiction.
13		Note: Conservation agreements cannot cover all or part of a Commonweal reserve (see subsection 305(4)).
15	535	At the end of paragraph 305(1A)(b)
6		Add:
17 18		or (iv) the ecological character of a declared Ramsar wetland; or
19 20		(v) the environment, in respect of the impact of a nuclear action; or
21 22		(vi) the environment in a Commonwealth marine area; or(vii) the environment on Commonwealth land;
23	536	At the end of paragraph 305(1A)(c)
24		Add:
25 26		; or (v) the ecological character of a declared Ramsar wetland; or
27 28		(vi) the environment, in respect of the impact of a nuclear action; or
29 80		(vii) the environment in a Commonwealth marine area; or (viii) the environment on Commonwealth land.
. •		(, the shift of common real and
31	537	At the end of subsection 305(2)
32		Add:

1 2	; and (c)	in the case of a proposed agreement wholly or partly for the protection and conservation of the ecological character of a
3 4 5		declared Ramsar wetland—the agreement: (i) will result in a net benefit to the conservation of that ecological character; and
6 7		(ii) is not inconsistent with the Australian Ramsar management principles; and
8 9 10 11	(d)	in the case of a proposed agreement wholly or partly for the protection and conservation of the environment, in respect of the impact nuclear actions—the agreement does not relate to the construction or operation of any of the following nuclear
12 13 14		installations:(i) a nuclear fuel fabrication plant;(ii) a nuclear power plant;
15 16 17	(a)	(iii) an enrichment plant;(iv) a reprocessing facility; andin the case of a proposed agreement wholly or partly for the
18 19 20 21	(c)	protection and conservation of the environment in a Commonwealth marine area—the agreement will result in a net benefit to the conservation of the environment in that area; and
22 23 24 25	(f)	in the case of a proposed agreement wholly or partly for the protection and conservation of the environment on Commonwealth land—the agreement will result in a net benefit to the conservation of the environment on that land.
26	538 Subsecti	on 305(3)
27 28		biodiversity or heritage values", substitute "as mentioned in n (2)(a), (b), (c), (e) or (f)".
29		osection 305(3)
30	Insert:	
31	(3A) If:	
32 33 34	(a)	the Minister is considering whether to enter into a proposed conservation agreement that is wholly or partly for the protection and conservation of biodiversity; and
35 36	(b)	the agreement would or could affect a particular listed threatened species or listed threatened ecological community;

1 2			er must, in deciding whether to enter into the agreement, and to any approved conservation advice for the species or
3		communit	* **
4	540	At the end of	paragraph 306(1)(a)
5		Add:	
6		(v)	the ecological character of a declared Ramsar wetland;
7 8		(vi)	the environment, in respect of the impact of a nuclear action;
9		(vii)	the environment in a Commonwealth marine area;
10		(viii)	the environment on Commonwealth land;
11	541	At the end of	paragraph 306(1)(b)
12		Add:	
13 14		or (v)	the ecological character of a declared Ramsar wetland; or
15 16		(vi)	the environment, in respect of the impact of a nuclear action; or
17		(vii)	the environment in a Commonwealth marine area; or
18		(viii)	the environment on Commonwealth land;
19	542	At the end of	paragraph 306(2)(a)
20		Add:	
21		(v)	the ecological character of a declared Ramsar wetland;
22		(vi)	the environment, in respect of the impact of a nuclear
23			action;
24			the environment in a Commonwealth marine area;
25		(V111)	the environment on Commonwealth land;
26	543	At the end of	paragraph 306(2)(b)
27		Add:	
28		or (v)	the ecological character of a declared Ramsar wetland;
29			or
30 31		(vi)	the environment, in respect of the impact of a nuclear action; or
32		(vii)	the environment in a Commonwealth marine area; or
33		(viii)	the environment on Commonwealth land;

1	544 After section 306
2	Insert:
3	306A Conservation agreement may include declaration that actions do not need approval under Part 9
5 6 7 8	(1) A conservation agreement may include a declaration to the effect that actions in a specified class do not need approval under Part 9 for the purposes of a specified provision of Part 3. The declaration may specify conditions relating to the taking of actions in the class.
9 10 11 12 13	(2) The Minister must not enter into a conservation agreement that contains a declaration under subsection (1) unless the Minister is satisfied that the actions to which the declaration relates are not likely to have a significant impact on the matter protected by the provision of Part 3 proposed to be specified in the declaration.
14	545 After section 307
15	Insert:
16	307A Conservation agreements may deal with remediation or
17	mitigation measures
18	When this section applies
19 20 21	(1) This section applies if the Minister considers that an action taken by a person after the commencement of this section contravened, or may have contravened, a provision of Part 3.
22 23	Conservation agreements may provide for measures to repair or mitigate damage
24 25 26 27 28 29	(2) The Minister may enter into a conservation agreement with the person that provides for the protection and conservation of a matter referred to in section 305 by providing for the taking of measures to repair or mitigate damage to the matter protected by the provision of Part 3 (whether or not the damage may or will be, or has been, caused by the action).
30 31 32	(3) The conservation agreement may state that specified provisions of the agreement, being provisions for the taking of measures as mentioned in subsection (2), are provisions that may be enforced in

1 2		to which such a statement applies is a <i>remediation provision</i> .
3 4 5		(4) If the conservation agreement contains a statement as mentioned in subsection (3), that statement must specify the provision of Part 3 referred to in subsection (1).
6		Federal Court may order compliance with remediation provision
7 8 9		(5) If the Minister considers that the person has contravened a remediation provision, the Minister may apply to the Federal Court for an order under subsection (6).
10 11 12		(6) If the Federal Court is satisfied that the person has contravened a remediation provision, the Court may make one or more of the following orders:
13		(a) an order directing the person to comply with the remediation
14 15		provision; (b) any other order that the Court considers appropriate.
16		Civil penalty for contravention of remediation provision
17		(7) The person must not contravene a remediation provision.
18 19		(8) Subsection (7) is a civil penalty provision. Under section 481, the Federal Court may order the person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person
20 21 22		to pay under that section for a contravention of the provision of Part 3 referred to in subsection (1).
23		This section does not limit sections 305, 306 and 307
24		(9) This section does not limit anything in sections 305, 306 and 307.
25	546	Section 324B
26		Repeal the section.
27 28	547	Subsection 324C(1) After "this Subdivision", insert "and Subdivisions BA, BB and BC".
29 30	548	Subsection 324C(1) (note) Repeal the note.
		•

1	549 Subsection 324C(2)
2	Repeal the subsection, substitute:
3 4 5 6 7	 (2) A place may be included in the National Heritage List only if: (a) the place is within the Australian jurisdiction; and (b) the Minister is satisfied that the place has one or more National Heritage values (subject to the provisions in Subdivision BB about the emergency process).
8 9	(3) A place that is included in the National Heritage List is called a <i>National Heritage place</i> .
.0	(4) The National Heritage List is not a legislative instrument.
1	550 Sections 324E to 324J
2	Repeal the sections, substitute:
13 14	Subdivision BA—Inclusion of places in the National Heritage List: usual process 324E Simplified outline
.6	The following is a simplified outline of this Subdivision:
17	This Subdivision sets out the usual process for the inclusion of places in the National Heritage List.
9 20 21 22	The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 324G).
23 24	The usual process involves the following steps for each assessment period:
25 26	(a) the Minister may determine heritage themes (this step is optional) (see section 324H);
27 28	(b) the Minister invites people to nominate places for inclusion in the National Heritage List, and gives

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1 2		the nominations to the Australian Heritage Council (see sections 324J and 324JA);
3 4	(c)	the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will
5 6 7		mostly be places that have been nominated) that it thinks should be assessed (see sections 324JB, 324JC and 324JD);
8	(d)	the Minister finalises the list of places that are to be assessed (see sections 324JE and 324JF);
10	(e)	the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 324JG);
13 14 15	(f)	the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 324JH and 324JI);
16 17 18	(g)	the Minister decides whether a place that has been assessed should be included in the National Heritage List (see section 324JJ).
19		ioned in paragraphs (a) to (d) will generally be ore the start of the assessment period.
21 3	24F Definitions	
22	In this Subdivis	sion:
23	assessment per	<i>riod</i> has the meaning given by subsection 324G(1).
24 25		essment consideration, in relation to an assessment meaning given by subsection 324JB(3).
26 27		ity assessment list for an assessment period has the by subsection 324JE(4).
28 29		ity assessment list for an assessment period has the by subsection 324JB(1).

1	324G	Meaning of assessment period
2		(1) For the purposes of this Subdivision, each of the following is an <i>assessment period</i> :
4		(a) the period of 12 months starting on the day determined in
5		writing by the Minister for the purposes of this paragraph;
6		(b) each period of 12 months starting on an anniversary of the
7		day so determined.
8		(2) The Minister must make a determination under paragraph (1)(a)
9		within 3 months after the commencement of this section. The day
0		so determined must not be more than 12 months after that
1		commencement.
12		(3) A determination under paragraph (1)(a) is a legislative instrument,
13		but neither section 42 nor Part 6 of the Legislative Instruments Act
14		2003 applies to the determination.
15	324H	Minister may determine heritage themes for an assessment
6		period
17		(1) Before the Minister invites nominations for an assessment period
18		under section 324J, the Minister may determine one or more
9		heritage themes that the Minister considers should be given priority
20		in relation to the assessment period.
21		(2) The Minister may request advice from the Australian Heritage
22		Council for the purpose of making a determination under
23		subsection (1), and may have regard to any advice the Council
24		provides in response to the request.
25		(3) A determination under subsection (1) is a legislative instrument,
26		but section 42 of the Legislative Instruments Act 2003 does not
27		apply to the determination.
28	324J	Minister to invite nominations for each assessment period
29		(1) Before the start of each assessment period, the Minister must
80		publish a notice inviting people to nominate places for inclusion in
31		the National Heritage List.
32		(2) A notice under subsection (1):

1 2	to in paragraph (3)(a); and
3	(b) must invite people to nominate, to the Minister, places for inclusion in the National Heritage List; and
5	(c) must identify the assessment period to which the notice
6	relates; and
7	(d) must specify a date (the <i>cut-off date</i>) by which nominations
8	must be received, which must be at least 40 business days
9	after the notice has been published as required by
10	paragraph (a); and
11	(e) must specify, or refer to, the information requirements, and
12 13	the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making
14	nominations; and
15	(f) may also include:
16	(i) information related to any heritage themes that the
17	Minister has determined under section 324H should be
18	given priority in relation to the assessment period; and
19	(ii) any other information that the Minister considers
20	appropriate.
21	(3) The regulations must provide for the following:
22	(a) how a notice under subsection (1) is to be published;
23	(b) the manner and form for making nominations;
24	(c) what information is to be included in a nomination.
25	324JA Minister to give nominations to Australian Heritage Council
26	Nominations in relation to first assessment period
27	(1) Within 30 business days after the cut-off date specified in the
28	notice under subsection 324J(1) for the first assessment period, the
29	Minister must give the Australian Heritage Council the
30	nominations that the Minister:
31	(a) had received before the end of that cut-off date; and
32	(b) had not already requested the Australian Heritage Council,
33	under section 324E (as in force before the commencement of this section), to assess; and
34	
35 36	(c) had not already rejected under section 324E (as in force before the commencement of this section); and
20	corors the commencement of this section, and

1	(d) does not reject under subsection (4).
2	(2) Subsection (1) does not apply to a nomination of a place if:
3	(a) the place is outside the Australian jurisdiction; or
4	(b) the Minister had, before the commencement of this section,
5	included the place in the National Heritage List under
6	section 324F (as in force before the commencement of this
7	section).
8	Nominations in relation to later assessment periods
9	(3) Within 30 business days after the cut-off date (the <i>current cut-off</i>
10	date) specified in the notice under subsection 324J(1) for an
11	assessment period (other than the first), the Minister must give the
12 13	Australian Heritage Council the nominations that were received by the Minister in the period:
14	(a) starting immediately after the end of the cut-off date
15	specified in the notice under subsection 324J(1) for the
16	immediately preceding assessment period; and
17	(b) ending at the end of the current cut-off date;
18	other than any such nominations that the Minister rejects under
19	subsection (4).
20	Minister may reject nominations
21	(4) The Minister may, in writing, reject a nomination if the Minister
22	considers that:
23	(a) the nomination is vexatious, frivolous or not made in good
24	faith; or
25	(b) the Minister considers that regulations referred to in
26	paragraph 324J(3)(b) or (c) have not been complied with in
27	relation to the nomination.
28	(5) If a nomination is rejected under paragraph (4)(b), the Minister
29	must, if practicable, notify the person who made the nomination of
30	the rejection of the nomination and the reason for the rejection.
31	Definition
32	(6) In this section:
33	nomination means a nomination of a place for inclusion in the
34	National Heritage List.

1 2	324JB	Australian Heritage Council to prepare proposed priority assessment list
3 4 5 6 7		(1) Within 40 business days after the Australian Heritage Council receives the nominations as required by subsection 324JA(1) in relation to an assessment period, the Council must prepare and give to the Minister a list (the <i>proposed priority assessment list</i>) for the assessment period.
8 9 10 11 12 13		 (2) The proposed priority assessment list is to consist of such of the places that are eligible for assessment consideration in relation to the assessment period as the Australian Heritage Council considers it appropriate to include in the list, having regard to: (a) any heritage themes determined by the Minister under section 324H in relation to the assessment period; and (b) the Council's own views about what should be given priority
15 16 17 18		in relation to the assessment period; and (c) the Council's capacity to make assessments under this Division while still performing its other functions; and (d) any other matters that the Council considers appropriate.
19 20 21 22 23 24 25 26 27 28 29 30 31 32		 (3) A place is <i>eligible for assessment consideration</i> in relation to the assessment period if: (a) the place has been nominated by a nomination referred to in subsection (1); or (b) the Council itself wishes to nominate the place for inclusion in the National Heritage List; or (c) the place was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) but was not included in the finalised priority assessment list for that assessment period; or (d) each part of the place is either a place to which paragraph (a) applies, a place to which paragraph (b) applies or a place to which paragraph (c) applies.
33 34 35 36 37		(4) Without limiting the generality of the Australian Heritage Council's discretion under subsection (2), the Council does not have to include in the proposed priority assessment list a place that has been nominated if the Council considers that it is unlikely that the place has any National Heritage values. For this purpose, the

1 2		Council is not required to have regard to any information beyond the information that was included in the nomination.
3		(5) The proposed priority assessment list is not a legislative instrument.
5	324JC	Matters to be included in proposed priority assessment list
6		(1) The proposed priority assessment list for an assessment period is to
7		include, for each place in the list:
8		(a) a description of the place; and
9		(b) an assessment completion time; and
10		(c) any other information required by the regulations.
11		(2) The assessment completion time for a place must be either:
12		(a) a time that is at or before the end of the assessment period to
13		which the list relates; or
14		(b) if the Australian Heritage Council considers it likely that
15 16		making an assessment in relation to the place will take a period that is longer than 12 months—the end of that longer
17		period (calculated from the start of the assessment period).
	224 ID	Statement to be given to Minister with proposed priority
18	324JD	Statement to be given to Minister with proposed priority
18 19	344JD	assessment list
	324JD	
19	324JD	assessment list
19 20	324JD	assessment list (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as
19 20 21	324JD	assessment list(1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must
19 20 21 22	32411	assessment list (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to: (a) for each place that is included in the list—why the Council
19 20 21 22 23	32411	assessment list (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to: (a) for each place that is included in the list—why the Council included the place in the list; and
19 20 21 22 23 24 25 26	324JD	 assessment list (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to: (a) for each place that is included in the list—why the Council included the place in the list; and (b) for each place that is not included in the list but that was
19 20 21 22 23 24 25 26 27	324JD	 assessment list (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to: (a) for each place that is included in the list—why the Council included the place in the list; and (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph
19 20 21 22 23 24 25 26 27 28	324JD	 assessment list (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to: (a) for each place that is included in the list—why the Council included the place in the list; and (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 324JB(3)(a) or (c)—why the Council did not include the
19 20 21 22 23 24 25 26 27	32411	 assessment list (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to: (a) for each place that is included in the list—why the Council included the place in the list; and (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph
19 20 21 22 23 24 25 26 27 28	324JD	 assessment list (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to: (a) for each place that is included in the list—why the Council included the place in the list; and (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 324JB(3)(a) or (c)—why the Council did not include the place in the list. (2) The statement must also identify, as places nominated by the
19 20 21 22 23 24 25 26 27 28 29	324JD	 assessment list (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to: (a) for each place that is included in the list—why the Council included the place in the list; and (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 324JB(3)(a) or (c)—why the Council did not include the place in the list.
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1 2 3		(b) any places that are included in the list because of paragraph 324JB(3)(d) that consist of one or more places to which paragraph 324JB(3)(b) applies.
4	324JE	The finalised priority assessment list
5 6 7 8		(1) Within 20 business days after the Minister, under section 324JB, receives the proposed priority assessment list for an assessment period, the Minister may, in writing, make changes to the list as mentioned in subsection (2).
9 0 1 2 3		 (2) The changes the Minister may make are as follows: (a) including a place in the list (and also including the matters referred to in subsection 324JC(1)); (b) omitting a place from the list (and also omitting the matters referred to in subsection 324JC(1)); (c) changing the assessment completion time for a place in the
4 5 6		(c) changing the assessment completion time for a place in the list;(d) any other changes of a kind permitted by the regulations.
7 8		(3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.
9 0 1 2		(4) At the end of the period of 20 business days referred to in subsection (1), the list, as changed (if at all) by the Minister, becomes the <i>finalised priority assessment list</i> for the assessment period.
3		(5) The Minister must notify the Australian Heritage Council of all changes that the Minister makes to the list.
.5		(6) The finalised priority assessment list is not a legislative instrument.
6	324JF	Publication of finalised priority assessment list
7		(1) The Australian Heritage Council must publish the finalised priority assessment list for an assessment period on the Internet.
9 0 1		(2) The Australian Heritage Council must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

1 2	324JG	Australian Heritage Council to invite comments on places in finalised priority assessment list
3 4 5 6		(1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must publish a notice inviting people to make comments on the place.
7 8 9 10		(2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.
11 12 13 14 15		 (3) A notice under subsection (1), in relation to a place or places: (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and (b) must identify the place or places to which the notice relates; and
16 17 18 19		(c) must invite people to make comments, to the Australian Heritage Council, about:(i) whether the place or places meet any of the National Heritage criteria; and
20 21		(ii) whether the place or places should be included in the National Heritage List; and
22 23 24 25		(d) must specify the date (the <i>cut-off date</i>) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
26 27 28		(e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
29 30 31		(f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and(g) may also include any other information that the Australian
32		Heritage Council considers appropriate.
33 34		(4) The regulations must provide for the following:(a) how a notice under subsection (1) is to be published;
35		(b) the manner and form for making comments.

1 2	324JH	Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister
3		(1) In relation to each place included in the finalised priority
4		assessment list for an assessment period, the Australian Heritage
5		Council must (by the time required by section 324JI):
6 7		(a) make a written assessment whether the place meets any of the National Heritage criteria; and
8		(b) give to the Minister:
9		(i) the written assessment (or a copy of it); and
10		(ii) a copy of the comments referred to in paragraphs (2)(a)
11		and (b) (whether or not they have all been taken into
12		account under subsection (2)).
13 14		(2) In making an assessment in relation to a place, the Australian Heritage Council, subject to subsections (3) and (4):
15		(a) must take into account the comments the Council receives in
16		response to the notice under subsection 324JG(1) in relation
17		to the place; and
18		(b) may take into account the comments the Council receives in
19		response to the opportunity referred to in paragraph (5)(c);
20		and
21 22		(c) may seek, and have regard to, information or advice from any source.
23		(3) The Australian Heritage Council is not required to take a comment
24		referred to in paragraph (2)(a) into account if:
25		(a) the Council does not receive the comment until after the
26		cut-off date specified in the notice under subsection 324JG(1)
27		in relation to the place; or (b) the Council considers that regulations referred to in
28 29		paragraph 324JG(4)(b) have not been complied with in
30		relation to the comment.
2.4		
31 32		(4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the
33		place meets any of the National Heritage criteria.
34		(5) If, in making an assessment, the Australian Heritage Council
35		considers that a place might have one or more National Heritage
36		values, the Council must:
37		(a) take all practicable steps:

1 2	(i) to identify each person who is an owner or occupier of all or part of the place; and
3	(ii) if the Council considers the place might have an
4	indigenous heritage value—to identify each Indigenous
5	person who has rights or interests in all or part of the
6	place; and
7	(b) take all practicable steps to advise each person identified that
8 9	the Council is assessing whether the place meets any of the National Heritage criteria; and
10	(c) give persons advised at least 20 business days to comment in
11	writing whether the place should be included in the National
12	Heritage List.
13	(6) If the Australian Heritage Council is satisfied that there are likely
14	to be at least 50 persons referred to in subparagraph (5)(a)(i), the
15	Council may satisfy the requirements of subsection (5) in relation
16	to those persons by including the information referred to in
17	paragraphs (5)(b) and (c) in one or more of the following:
18	(a) advertisements in a newspaper, or newspapers, circulating in
19	the area in which the place is located;
20	(b) letters addressed to "The owner or occupier" and left at all
21	the premises that are wholly or partly within the place;
22	(c) displays in public buildings at or near the place.
23	(7) If:
24	(a) the Australian Heritage Council considers that the place
25	might have an indigenous heritage value; and
26	(b) there are Indigenous persons who:
27	(i) have rights or interests in all or part of the place; and
28	(ii) are neither owners nor occupiers of all or part of the
29	place; and
30	(c) the Australian Heritage Council is satisfied that there is a
31	body, or there are bodies, that can appropriately represent
32	those Indigenous persons in relation to those rights and
33	interests;
34	the Australian Heritage Council may satisfy the requirements of
35	subsection (5) in relation to those Indigenous persons by giving the
36	information referred to in paragraphs (5)(b) and (c) to that body or
37	those bodies.

1	324JI	Time by which assessments to be provided to Minister
2 3 4 5		(1) Subsection 324JH(1) must be complied with, in relation to a place included in the finalised priority assessment list for an assessment period, by the assessment completion time specified in the list for the place, or by that time as extended under this section.
6 7 8 9		(2) The Australian Heritage Council may request the Minister to extend the assessment completion time (or that time as previously extended) if the Council considers that it needs more time to make the assessment.
10 11 12 13 14		(3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.
15		(4) An extension under subsection (3) must be made in writing.
16 17 18		(5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.
19 20	324JJ	Decision about inclusion of a place in the National Heritage List
21		Minister to decide whether or not to include place
22 23 24 25		(1) After receiving from the Australian Heritage Council an assessment under section 324JH whether a place (the <i>assessed place</i>) meets any of the National Heritage criteria, the Minister must:
26 27		(a) by instrument published in the <i>Gazette</i> , include in the National Heritage List:
28		(i) the assessed place or a part of the assessed place; and
29		(ii) the National Heritage values of the assessed place, or
30 31		that part of the assessed place, that are specified in the instrument; or
32		(b) in writing, decide not to include the assessed place in the
33		National Heritage List.

1 2 3	Note: The Minister may include a place in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values (see subsection 324C(2)).
4	(2) Subject to subsection (3), the Minister must comply with
5	subsection (1) within 90 business days after the day on which the
6	Minister receives the assessment.
7	(3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
0	
9	(4) Particulars of an extension or further extension under
10	subsection (3) must be published on the Internet and in any other
11	way required by the regulations.
12	(5) For the purpose of deciding what action to take under
13	subsection (1) in relation to the assessed place:
14	(a) the Minister must have regard to:
15	(i) the Australian Heritage Council's assessment whether
16	the assessed place meets any of the National Heritage
17	criteria; and
18	(ii) the comments (if any), a copy of which were given to
19	the Minister under subsection 324JH(1) with the
20	assessment; and
21	(b) the Minister may seek, and have regard to, information or
22	advice from any source.
23	Additional requirements if Minister decides to include place
24	(6) If the Minister includes the assessed place, or a part of the assessed
25	place (the <i>listed part of the assessed place</i>), in the National
26	Heritage List, he or she must, within a reasonable time:
27	(a) take all practicable steps to:
28	(i) identify each person who is an owner or occupier of all
29	or part of the assessed place; and
30	(ii) advise each person identified that the assessed place, or
31	the listed part of the assessed place, has been included
32	in the National Heritage List; and
33	(b) if the assessed place:
34	(i) was nominated; or
35	(ii) was included in a place that was nominated; or
36	(iii) includes a place that was nominated;
	•

1	by a person in response to a notice under subsection
2	324J(1)—advise the person that the assessed place, or the
3	listed part of the assessed place, has been included in the National Heritage List; and
4	
5	(c) publish a copy of the instrument referred to in
6	paragraph (1)(a) on the Internet; and
7	(d) publish a copy or summary of that instrument in accordance
8	with any other requirements specified in the regulations.
9	(7) If the Minister is satisfied that there are likely to be at least 50
10	persons referred to in subparagraph (6)(a)(i), the Minister may
11	satisfy the requirements of paragraph (6)(a) in relation to those
12	persons by including the advice referred to in that paragraph in one
13	or more of the following:
14	(a) advertisements in a newspaper, or newspapers, circulating in
15	the area in which the assessed place is located;
16	(b) letters addressed to "The owner or occupier" and left at all
17	the premises that are wholly or partly within the assessed
18	place;
19	(c) displays in public buildings at or near the assessed place.
20	Additional requirements if Minister decides not to include place
21	(8) If the Minister decides not to include the assessed place in the
22	National Heritage List, the Minister must, within 10 business days
23	after making the decision:
24	(a) publish the decision on the Internet; and
25	(b) if the assessed place:
26	(i) was nominated; or
27	(ii) was included in a place that was nominated; or
28	(iii) includes a place that was nominated;
29	by a person in response to a notice under subsection
30	324J(1)—advise the person of the decision, and of the
31	reasons for the decision.
32	Note: Subsection (8) applies in a case where the Minister decides that none
33	of the assessed place is to be included in the National Heritage List.

30

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

Dist. emergency process
324JK Simplified outline
The following is a simplified outline of this Subdivision:
This Subdivision sets out the emergency process for the inclusion of places in the National Heritage List.
The emergency process involves the following steps:
(a) the Minister may include a place in the National Heritage List if it is under threat (see section 324JL);
(b) the Minister asks the Australian Heritage Council to assess the place (see section 324JM);
(c) the Australian Heritage Council publishes notice of the listing and invites comments (see section 324JN);
(d) the Australian Heritage Council assesses the place, and gives the assessment to the Minister (see sections 324JO and 324JP);
(e) the Minister has 12 months from the listing of the place to decide whether it should continue to be listed, and the listing will lapse if the Minister does not make a decision within that period (see section 324JQ).
324JL Minister may include place in National Heritage List if under threat
(1) If the Minister believes that:
(a) a place has or may have one or more National Heritage values; and
(b) any of those values is under threat of a significant adverse

impact; and

1	(c) that threat is both likely and imminent;
2	the Minister may, by instrument published in the Gazette, include
3	in the National Heritage List the place and the National Heritage
4	values the Minister believes the place has or may have.
5	(2) If:
6	(a) the place is included in the National Heritage List under
7	subsection (1); and
8	(b) before that inclusion of the place, the place was being
9	considered for inclusion in the List under the process set out
10	in Subdivision BA;
11	that process ceases to apply to the place when it is included in the
12	List under subsection (1).
13	Note: Subsection (2) does not prevent the process in Subdivision BA again
14	starting to apply to the place if (for example) the place ceases to be
15 16	listed because of subsection 324JQ(1) or (4) and a person subsequently nominates the place under that Subdivision.
10	
17	(3) If the place is included in the National Heritage List under
18	subsection (1), the Minister must:
19	(a) within 10 business days after the inclusion of the place,
20	publish a copy of the instrument under subsection (1):
21	(i) on the Internet; and
22	(ii) in accordance with any other requirements specified in
23	the regulations; and
24	(b) take all practicable steps to:
25	(i) identify each person who is an owner or occupier of all
26	or part of the place; and
27	(ii) advise each person identified that the place has been
28	included in the National Heritage List.
29	(4) If the Minister is satisfied that there are likely to be at least 50
30	persons referred to in subparagraph (3)(b)(i), the Minister may
31	satisfy the requirements of paragraph (3)(b) in relation to those
32	persons by including the advice referred to in that paragraph in one
33	or more of the following:
34	(a) advertisements in a newspaper, or newspapers, circulating in
35	the area in which the place is located;
36	(b) letters addressed to "The owner or occupier" and left at all
37	the premises that are wholly or partly within the place;
38	(c) displays in public buildings at or near the place.

1	324JM	Mi	nister to ask Australian Heritage Council for assessment
2 3 4 5		(1)	If the Minister includes a place in the National Heritage List under section 324JL, the Minister must, in writing, request the Australian Heritage Council to give the Minister an assessment of whether the place meets any of the National Heritage criteria.
6 7		(2)	The request must specify the assessment completion time for the assessment.
8 9			Note: When specifying an assessment completion time, the 12-month period referred to in subsection 324JQ(1) should be considered.
10	324JN	Pu	olication of listing of place and inviting comments
11 12 13		(1)	If the Australian Heritage Council receives a request under subsection 324JM(1) in relation to a place that has been included in the National Heritage List, the Council must publish a notice inviting people to comment on the listing of the place.
15 16 17		(2)	A notice under subsection (1) in relation to a place: (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
18 19 20			(b) must contain the following:(i) a description of the place;(ii) a statement that the place has been included in the
21 22 23			National Heritage List, and that specifies the National Heritage values that have been included in the List in relation to the place;
24 25			(iii) the date on which the place was so included; and(c) must invite people to make comments, to the Australian
26 27 28			Heritage Council, about: (i) whether the place meets any of the National Heritage criteria; and
29 30			(ii) whether the place should continue to be included in the National Heritage List; and
31 32 33 34			(d) must specify the date (the <i>cut-off date</i>) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
			harabarka (a), and

1		(e) must specify, or refer to, the manner and form requirements
2		that, under regulations referred to in paragraph (3)(b), apply to making comments.
4		(3) The regulations may provide for either or both of the following:
5		(a) how a notice under subsection (1) is to be published;
6		(b) the manner and form for making comments.
7	324JO	Australian Heritage Council to assess place and give
8		assessment to Minister
9 10		(1) Section 324JH applies in relation to a request under subsection 324JM(1) as if:
11		(a) a reference in section 324JH to a place included in the
12		finalised priority assessment list for an assessment period
13		were a reference to the place to which the request relates; and
14		(b) a reference in section 324JH to the notice under subsection
15		324JG(1) in relation to the place were a reference to the
16		notice under subsection 324JN(1) in relation to the place; and
17		(c) a reference in section 324JH to regulations referred to in
18		paragraph 324JG(4)(b) were a reference to regulations
19		referred to in paragraph 324JN(3)(b); and
20		(d) a reference in section 324JH to whether the place should be included in the National Heritage List were a reference to
21 22		whether the place should continue to be included in the
23		National Heritage List.
24		(2) A reference in another provision of this Act to section 324JH, or to
25		a provision of that section, includes a reference to that section or
26		provision as it applies because of this section.
27	324JP	Time by which assessments to be provided to Minister
28		(1) Section 324JI applies in relation to a request under subsection
29		324JM(1) as if:
30		(a) a reference in section 324JI to a place included in the
31		finalised priority assessment list for an assessment period
32		were a reference to the place to which the request relates; and
33		(b) a reference in section 324JI to the assessment completion
34		time specified in the list for the place were a reference to the
35		assessment completion time specified in the request.

1 2 3	(2) A reference in another provision of this Act to section 324JI, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.
4	324JQ Decision about place remaining in the National Heritage List
5	Minister to decide whether place should remain listed
6 7 8 9	(1) Within 12 months after the inclusion of a place in the National Heritage List under section 324JL, the Minister must, by instrument published in the <i>Gazette</i> , subject to subsections (2) and (3):
10	(a) do one of the following:
11	(i) state that the place remains in the National Heritage List with its boundary unaltered;
13 14 15	(ii) alter the boundary of the place described in the National Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
17	(iii) remove from the National Heritage List the place and its
8	National Heritage values; and
19 20	(b) if the place is not removed from the National Heritage List under subparagraph (a)(iii)—do all or any of the following:
21 22 23	(i) state that specified National Heritage values included in the List under section 324JL for the place remain in the List for the place;
24 25 26	(ii) include in the List for the place specified National Heritage values of the place that were not included in the List under section 324JL for the place;
27 28	(iii) remove from the List for the place specified National Heritage values that were included in the List under
29	section 324JL for the place.
80	(2) The Minister must not take action under subsection (1) unless the
31	Minister has received an assessment from the Australian Heritage
32	Council under section 324JH in relation to the place.
33	(3) The Minister must not take action under subsection (1) that results
34	in the place remaining in the National Heritage List (whether or not
35	with the same or a different boundary) unless the Minister is
36	satisfied that the place has one or more National Heritage values.

1 2	Listing lapses automatically if action not taken within 12 months of listing
3 4 5 6 7	(4) If the Minister does not take action under subsection (1) within the period referred to in that subsection, the place, and its listed National Heritage values, are automatically removed from the National Heritage List, by force of this subsection, at the end of that period.
8 9	Note: This subsection applies even if the Minister is prevented from taking action under subsection (1) because of subsection (2).
10	Matters to be considered
11 12	(5) For the purpose of deciding what action to take under subsection (1) in relation to the place:
13	(a) the Minister must have regard to:
14	(i) the Australian Heritage Council's assessment whether
15	the place meets any of the National Heritage criteria;
16	and
17	(ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the
18 19	assessment; and
20	(b) the Minister may seek, and have regard to, information or
21	advice from any source.
22	Disapplying section 324L
23	(6) Section 324L does not apply to:
24	(a) an alteration of the boundary of the place, under
25	subparagraph (1)(a)(ii) of this section, that has the effect of
26	removing part of the place from the National Heritage List;
27	Or (b) the removed of the place and its National Heritage values
28 29	(b) the removal of the place and its National Heritage values under subparagraph (1)(a)(iii) of this section; or
30	(c) the removal of a National Heritage value of the place under
31	subparagraph (1)(b)(iii) of this section.
32	Minister to publish copy or summary of subsection (1) notice
33	(7) The Minister must publish a copy or summary of the instrument
34	referred to in subsection (1). The regulations may specify how the
35	publication is to be made. Subject to any such regulations, the

1 2	publication must be made in a way that the Minister considers appropriate.
3	Additional requirements if place etc. is removed under
4	subsection (1)
5	(8) If, under subsection (1), the Minister removes from the National
6	Heritage List the place or a National Heritage value of the place, or
7 8	alters the boundary of the place described in the List, the Minister must, within 10 business days after the removal or alteration:
	•
9	(a) publish a copy of the instrument referred to in subsection (1) on the Internet; and
1	(b) advise each person identified by the Minister as an owner or
12	occupier of all or part of the place of the removal or alteration.
14 15	Note: For the obligation to identify owners or occupiers, see subsection 324JL(3).
16	Requirements if place is removed under subsection (4)
17	(9) If, under subsection (4), the place, and its listed National Heritage
18 19	values, are removed from the National Heritage List, the Minister must, within 10 business days after the removal:
20	(a) publish notice of the removal on the Internet; and
21	(b) advise each person identified by the Minister as an owner or
22	occupier of all or part of the place of the removal.
23	Note: For the obligation to identify owners or occupiers, see subsection
24	324JL(3).
25	Alternative methods of notifying owners and occupiers
26	(10) If the Minister is satisfied that there are likely to be at least 50
27	persons referred to in paragraph (8)(b) or (9)(b), the Minister may
28	satisfy the requirements of that paragraph in relation to those
29	persons by including the advice referred to in that paragraph in one
80	or more of the following:
31	(a) advertisements in a newspaper, or newspapers, circulating in
32	the area in which the place is located;
33	(b) letters addressed to "The owner or occupier" and left at all
34	the premises that are wholly or partly within the place;
35	(c) displays in public buildings at or near the place.

Subdivision BC—Other provisions relating to the National Heritage List

2	Heritage List
3	324JR Co-ordination with Scientific Committee—Council undertaking assessment
5	(1) This section applies if:
6	(a) the Australian Heritage Council undertakes an assessment of
7 8 9	a place under Subdivision BA or Subdivision BB; and (b) before giving the assessment to the Minister, the Council becomes aware that:
10	(i) the Scientific Committee is undertaking, or has
11 12	undertaken, an assessment under Division 1 of Part 13; and
13	(ii) there is a matter that is relevant to both the assessment
14	referred to in paragraph (a) and the assessment referred
15	to in subparagraph (i).
16	(2) A member of the Australian Heritage Council may discuss the
17	matter with a member of the Scientific Committee.
18	(3) Before the Australian Heritage Council gives an assessment of the
19	place to the Minister under Subdivision BA or Subdivision BB, the
20	Council must comply with subsection (4) or (6).
21	(4) If the Scientific Committee has not yet given the Minister an
22	assessment that deals with that matter, the Australian Heritage
23	Council must:
24	(a) give the Scientific Committee a copy of the assessment of the
25	place that the Council proposes to give to the Minister; and
26	(b) invite the Scientific Committee to give the Council its comments in relation to that matter; and
27	•
28 29	(c) take into account, in finalising the assessment of the place that the Council gives the Minister, any comments that the
30	Scientific Committee makes in relation to that matter in
31	response to that invitation within 14 days, or such longer
32	period as is specified in the invitation, after being given the
33	invitation.
34	(5) If the Australian Heritage Council gives the Scientific Committee
35	copy of a proposed assessment of a place under paragraph (4)(a),

1 2		the Council must also give the Scientific Committee a copy of the assessment of that place that the Council gives the Minister.	ie
3		(6) If:	
4		(a) the Scientific Committee has already given the Minister an	
5		assessment that deals with that matter; and	
6		(b) the Australian Heritage Council has been given a copy of t	hat
7		assessment;	
8		the Australian Heritage Council must take that assessment into	
9		account in finalising the assessment of the place that the Council	
10		gives the Minister.	
11		(7) If, under section 194S or 194T, the Scientific Committee gives the	he
12		Australian Heritage Council a proposed assessment, or an	
13		assessment, that deals with a particular matter because the Counc	cil
14		is undertaking an assessment that deals with that matter, a memb	er
15		of the Council may discuss that matter with a member of the	
16		Scientific Committee.	
17		(8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have	•
18		effect despite section 324R.	
19	324JS	Co-ordination with Scientific Committee—Council given	
19 20	324JS	Co-ordination with Scientific Committee—Council given assessment to Minister	
	324JS	assessment to Minister	
20 21	324JS	assessment to Minister (1) This section applies if:	ın
20 21 22	324JS	assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister a	
20 21	324JS	assessment to Minister (1) This section applies if:	
20 21 22 23	324JS	assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister a assessment of a place under Subdivision BA or Subdivision	
20 21 22 23 24 25	324JS	assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister a assessment of a place under Subdivision BA or Subdivision BB; and (b) the Council is aware that:	n
20 21 22 23 24	324JS	assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister a assessment of a place under Subdivision BA or Subdivision BB; and	n
20 21 22 23 24 25 26	324JS	assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister assessment of a place under Subdivision BA or Subdivision BB; and (b) the Council is aware that: (i) the Scientific Committee is undertaking an assessment.	n ıt
20 21 22 23 24 25 26 27	324JS	assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister a assessment of a place under Subdivision BA or Subdivision BB; and (b) the Council is aware that: (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and	n ıt
20 21 22 23 24 25 26 27 28	324JS	assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister a assessment of a place under Subdivision BA or Subdivision BB; and (b) the Council is aware that: (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and (ii) there is a matter that is relevant to both the assessment	n ıt
220 221 222 223 224 225 226 227 228 229	324JS	assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister as assessment of a place under Subdivision BA or Subdivision BB; and (b) the Council is aware that: (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred.	n ıt
20 21 22 23 24 25 26 27 28 29 30	324JS	assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister a assessment of a place under Subdivision BA or Subdivision BB; and (b) the Council is aware that: (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).	n ıt
20 21 22 23 24 25 26 27 28 29 30	324JS	assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister a assessment of a place under Subdivision BA or Subdivision BB; and (b) the Council is aware that: (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i). (2) The Australian Heritage Council must, within 7 days after	n t ted
20 21 22 23 24 25 26 27 28 29 30	324JS	assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister a assessment of a place under Subdivision BA or Subdivision BB; and (b) the Council is aware that: (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i). (2) The Australian Heritage Council must, within 7 days after becoming aware as referred to in paragraph (1)(b):	n t ted
20 21 22 23 24 25 26 27 28 29 30 31 32 33	324JS	 assessment to Minister (1) This section applies if: (a) the Australian Heritage Council has given to the Minister at assessment of a place under Subdivision BA or Subdivision BB; and (b) the Council is aware that: (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i). (2) The Australian Heritage Council must, within 7 days after becoming aware as referred to in paragraph (1)(b): (a) ensure the Scientific Committee is aware of the existence of 	n t ted

1 2	(3) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
3	(4) Subsections (2) and (3) have effect despite section 324R.
4	551 Subsection 324K(1)
5 6	Omit "this Subdivision that is before this section and", substitute "Subdivision BA or BB".
7	552 Subsection 324K(1)
8 9	Omit "an earlier provision of this Subdivision", substitute "an earlier provision of that Subdivision".
10	553 Subsection 324L(1) (note)
11	Omit "324J(5)", substitute "324JQ(1)".
12	554 Subsection 324M(6)
13	Repeal the subsection.
14	555 Section 324N
15	Repeal the section, substitute:
16 17	324N Specifying one or more additional National Heritage values for a National Heritage place
18 19 20	(1) The regulations may make provision for, or in relation to, the specification in the National Heritage List of additional National Heritage values in relation to National Heritage places.
21 22 23 24	(2) Without limiting the generality of subsection (1), regulations may make provision as mentioned in that subsection by specifying modifications of provisions of this Act. However, regulations must not:
25 26	(a) increase, or have the effect of increasing, the maximum penalty for any offence; or
27 28	(b) widen, or have the effect of widening, the scope of any offence.
29	(3) In this section:
30	modifications includes additions, omissions or substitutions.

1	556	Paragraph 324R(1)(a)
2		Omit "324G", substitute "324JH".
3	557	Paragraph 324R(2)(a)
4		Repeal the paragraph, substitute:
5		(a) the duty not to disclose a thing described in paragraph (1)(a)
6		in relation to a place does not exist after:
7		(i) publication in the Gazette of an instrument under
8		paragraph 324JJ(1)(a) or subsection 324JQ(1) in
9		relation to the place; or
10		(ii) the Minister decides under paragraph 324JJ(1)(b) not to include the place in the National Heritage List; and
12	558	Subparagraph 324R(2)(b)(ii)
13		Repeal the subparagraph, substitute:
4		(ii) the Minister decides under section 324M not to remove
15		the place or a part of the place, or one or more of the
6		place's National Heritage values, from the National
17		Heritage List.
18	559	After subsection 324R(2)
19		Insert:
20		(2A) This section does not prevent the Australian Heritage Council from
21 22		informing a person, or having discussions with a person, about the consequences that result or may result from:
23 24		(a) a place being, or not being, included in the National Heritage List; or
25 26		(b) National Heritage values of a place being, or not being, included in the List; or
27		(c) a place or part of a place, or one or more National Heritage
28		values of a place, being removed from the List.
29		(2B) Subsection (1) does not apply to a disclosure of particular
80		information if:
31		(a) the Chair of the Australian Heritage Council requests the
32		Minister to give permission to disclose that information to a
33 34		particular person (or persons within a particular group of persons); and
34 35		(b) the Minister gives that permission; and
,,		(b) the termister gives that permission, and

1 2		(c) the disclosure is made to that person (or a person within that group).
3	560	Paragraph 324R(3)(a)
4		Omit "324G", substitute "324JH".
5	561	Subsection 324S(1)
6		Repeal the subsection (not including the note), substitute:
7 8 9		(1) The Minister must make a written plan to protect and manage the National Heritage values of each National Heritage place that is entirely within one or more Commonwealth areas. The Minister
10 11		must do so as soon as practicable after the first time the place satisfies both of the following paragraphs:
12		(a) the place is included in the National Heritage List;
13 14		(b) the place is entirely within one or more Commonwealth areas.
15	562	At the end of section 324S
16		Add:
17 18		(7) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument.
19	563	Paragraph 324Y(2)(c)
20		Repeal the paragraph, substitute:
21		(c) either or both of the following:
22		(i) a Commonwealth area;
23		(ii) a Territory; or
24	564	Subsection 341C(1)
25		After "this Subdivision", insert "and Subdivisions BA, BB and BC".
26	565	Subsection 341C(1) (note)
27		Repeal the note.
28	566	Subsection 341C(2)
29		Repeal the subsection, substitute:

1 2	(2) A place may be included in the Commonwealth Heritage List only if:	
3	(a) the place either:	
4	(i) is entirely within a Commonwealth area; or	
	(ii) is outside the Australian jurisdiction and is owned or	
5 6	leased by the Commonwealth or a Commonwealth	
7	Authority; and	
8	(b) the Minister is satisfied that the place has one or more	
9	Commonwealth Heritage values (subject to the provisions in	
10	Subdivision BB about the emergency process).	
11 12	(3) A place that is included in the Commonwealth Heritage List is called a <i>Commonwealth Heritage place</i> .	
13	(4) The Commonwealth Heritage List is not a legislative instrument.	
14	567 Sections 341E to 341J	
15	Repeal the sections, substitute:	
16	Subdivision BA—Inclusion of places in the Commonwealth	
16	Subdivision DA—inclusion of places in the Commonwealth	
17	Haritaga List: usual process	
17	Heritage List: usual process	
	Heritage List: usual process 341E Simplified outline	
18	•	
18 19	341E Simplified outline The following is a simplified outline of this Subdivision:	
18 19 20	341E Simplified outline	
18 19 20 21	341E Simplified outline The following is a simplified outline of this Subdivision: This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List.	
118 119 20 21	341E Simplified outline The following is a simplified outline of this Subdivision: This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List. The usual process involves an annual cycle that revolves around	
118 119 220 221 22 23	341E Simplified outline The following is a simplified outline of this Subdivision: This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List. The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister	
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18 19 20 21 22 23 24 25	The following is a simplified outline of this Subdivision: This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List. The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 341G).	
18 19 20 21 22 23 24 25	The following is a simplified outline of this Subdivision: This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List. The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 341G). The usual process involves the following steps for each assessment	
18 19 20 21 22 23 24 25	The following is a simplified outline of this Subdivision: This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List. The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 341G).	
18 19 20 21 22 23 24 25	The following is a simplified outline of this Subdivision: This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List. The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 341G). The usual process involves the following steps for each assessment period: (a) the Minister invites people to nominate places for	
18 19 20 21 22 23 24 25 26 27 28 29	The following is a simplified outline of this Subdivision: This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List. The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 341G). The usual process involves the following steps for each assessment period: (a) the Minister invites people to nominate places for inclusion in the Commonwealth Heritage List, and	
18 19 20 21 22 23 24 25 26 27	The following is a simplified outline of this Subdivision: This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List. The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 341G). The usual process involves the following steps for each assessment period: (a) the Minister invites people to nominate places for	

1 2 3 4 5		(b)	the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will mostly be places that have been nominated) that it thinks should be assessed (see sections 341JA, 341JB and 341JC);
6 7		(c)	the Minister finalises the list of places that are to be assessed (see sections 341JD and 341JE);
8 9 10		(d)	the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 341JF);
11 12 13		(e)	the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 341JG and 341JH);
14 15 16		(f)	the Minister decides whether a place that has been assessed should be included in the Commonwealth Heritage List (see section 341JI).
17 18			tioned in paragraphs (a) to (c) will generally be ore the start of the assessment period.
19	341F Def	initions	
20		In this Subdivi	sion:
21		assessment per	riod has the meaning given by subsection 341G(1).
22 23			essment consideration, in relation to an assessment meaning given by subsection 341JA(3).
24 25			ity assessment list for an assessment period has the by subsection 341JD(4).
26 27			ity assessment list for an assessment period has the by subsection 341JA(1).
28	341G Me	aning of assess	sment period
29 30	(1)	For the purpose assessment per	es of this Subdivision, each of the following is an <i>riod</i> :

1 2	(a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph;
3 4	(b) each period of 12 months starting on an anniversary of the day so determined.
5	(2) The Minister must make a determination under paragraph (1)(a)
6	within 3 months after the commencement of this section. The day
7	so determined must not be more than 12 months after that
8	commencement.
9	(3) A determination under paragraph (1)(a) is a legislative instrument,
10	but neither section 42 nor Part 6 of the Legislative Instruments Act
11	2003 applies to the determination.
12	341H Minister to invite nominations for each assessment period
13	(1) Before the start of each assessment period, the Minister must
14	publish a notice inviting people to nominate places for inclusion in
15	the Commonwealth Heritage List.
16 17	Note: For which places can be included in the Commonwealth Heritage List see subsection 341C(2).
18	(2) A notice under subsection (1):
19	(a) must be published in accordance with the regulations referred
20	to in paragraph (3)(a); and
21	(b) must invite people to nominate, to the Minister, places for
22	inclusion in the Commonwealth Heritage List; and
23	(c) must identify the assessment period to which the notice
24	relates; and
25	(d) must specify a date (the <i>cut-off date</i>) by which nominations
26	must be received, which must be at least 40 business days
27	after the notice has been published as required by
28	paragraph (a); and
29	(e) must specify, or refer to, the information requirements, and
30	the manner and form requirements, that, under regulations
31	referred to in paragraphs (3)(b) and (c), apply to making
32	nominations; and
33	(f) may also include any other information that the Minister
34	considers appropriate.
35	(3) The regulations must provide for the following:
36	(a) how a notice under subsection (1) is to be published;

1	(b) the manner and form for making nominations;
2	(c) what information is to be included in a nomination.
3	341J Minister to give nominations to Australian Heritage Council
4	Nominations in relation to first assessment period
5	(1) Within 30 business days after the cut-off date specified in the
6	notice under subsection 341H(1) for the first assessment period, the
7	Minister must give the Australian Heritage Council the
8	nominations that the Minister:
9	(a) had received before the end of that cut-off date; and
10	(b) had not already requested the Australian Heritage Council,
11	under section 341E (as in force before the commencement of
12	this section), to assess; and
13	(c) had not already rejected under section 341E (as in force
14	before the commencement of this section); and
15	(d) does not reject under subsection (4).
16	(2) Subsection (1) does not apply to a nomination of a place if the
17	Minister had, before the commencement of this section, included
18	the place in the Commonwealth Heritage List under section 341F
19	(as in force before the commencement of this section).
20	Nominations in relation to later assessment periods
21	(3) Within 30 business days after the cut-off date (the <i>current cut-off</i>
22	<i>date</i>) specified in the notice under subsection 341H(1) for an
23	assessment period (other than the first), the Minister must give the
24	Australian Heritage Council the nominations that were received by
25	the Minister in the period:
26	(a) starting immediately after the end of the cut-off date
27	specified in the notice under subsection 341H(1) for the
28	immediately preceding assessment period; and
29	(b) ending at the end of the current cut-off date;
30	other than any such nominations that the Minister has rejected
31	under subsection (4).
32	Minister may reject nominations
33	(4) The Minister may, in writing, reject a nomination if the Minister
34	considers that:

1 2		(a) the nomination is vexatious, frivolous or not made in good faith; or
3		(b) the Minister considers that regulations referred to in
4		paragraph 341H(3)(b) or (c) have not been complied with in
5		relation to the nomination.
6		(5) If a nomination is rejected under paragraph (4)(b), the Minister
7 8		must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.
9		Definition
10		(6) In this section:
11 12		<i>nomination</i> means a nomination of a place for inclusion in the Commonwealth Heritage List.
13 14	341JA	Australian Heritage Council to prepare proposed priority assessment list
15		(1) Within 40 business days after the Australian Heritage Council
16		receives the nominations as required by subsection 341J(1) in
17		relation to an assessment period, the Council must prepare and give
18 19		to the Minister a list (the <i>proposed priority assessment list</i>) for the assessment period.
20		(2) The proposed priority assessment list is to consist of such of the
21		places that are eligible for assessment consideration in relation to
22		the assessment period as the Australian Heritage Council considers
23		it appropriate to include in the list, having regard to:
24		(a) the Council's own views about what should be given priority
25		in relation to the assessment period; and
26 27		(b) the Council's capacity to make assessments under this Division while still performing its other functions; and
		(c) any other matters that the Council considers appropriate.
28		(c) any other matters that the Council considers appropriate.
29		(3) A place is <i>eligible for assessment consideration</i> in relation to the
30		assessment period if:
31		(a) the place has been nominated by a nomination referred to in
32		subsection (1); or
33		(b) the Council itself wishes to nominate the place for inclusion
34		in the Commonwealth Heritage List; or

1 2 3 4 5 6 7 8	(4)	 (c) the place was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) but was not included in the finalised priority assessment list for that assessment period; or (d) each part of the place is either a place to which paragraph (a) applies, a place to which paragraph (b) applies or a place to which paragraph (c) applies. Without limiting the generality of the Australian Heritage
10 11 12 13 14	(1)	Council's discretion under subsection (2), the Council does not have to include in the proposed priority assessment list a place that has been nominated if the Council considers that it is unlikely that the place has any Commonwealth Heritage values. For this purpose, the Council is not required to have regard to any information beyond the information that was included in the
16 17 18	(5)	nomination. The proposed priority assessment list is not a legislative instrument.
19	341JB Ma	atters to be included in proposed priority assessment list
20 21 22 23 24	(1)	The proposed priority assessment list for an assessment period is to include, for each place in the list: (a) a description of the place; and (b) an assessment completion time; and (c) any other information required by the regulations.
21 22 23		include, for each place in the list: (a) a description of the place; and (b) an assessment completion time; and
21 22 23 24 25 26 27 28 29 30	(2)	 include, for each place in the list: (a) a description of the place; and (b) an assessment completion time; and (c) any other information required by the regulations. The assessment completion time for a place must be either: (a) a time that is at or before the end of the assessment period to which the list relates; or (b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take a period that is longer than 12 months—the end of that longer

1 2	also give the Minister a statement setting out such information as the Council considers appropriate relating to:
3	(a) for each place that is included in the list—why the Council
4	included the place in the list; and
5	(b) for each place that is not included in the list but that was
6	eligible for assessment consideration because of paragraph
7	341JA(3)(a) or (c)—why the Council did not include the
8	place in the list.
9	(2) The statement must also identify, as places nominated by the
0	Australian Heritage Council:
1	(a) any places that are included in the list because the Council
12	itself wishes to nominate them (see paragraph 341JA(3)(b));
13	and
14	(b) any places that are included in the list because of paragraph
15	341JA(3)(d) that consist of one or more places to which
16	paragraph 341JA(3)(b) applies.
17	341JD The finalised priority assessment list
8	(1) Within 20 business days after the Minister, under section 341JA,
19	receives the proposed priority assessment list for an assessment
20	period, the Minister may, in writing, make changes to the list as
21	mentioned in subsection (2).
22	(2) The changes the Minister may make are as follows:
23	(a) including a place in the list (and also including the matters
24	referred to in subsection 341JA(1));
25	(b) omitting a place from the list (and also omitting the matters
26	referred to in subsection 341JA(1));
27	(c) changing the assessment completion time for a place in the
28	list;
29	(d) any other changes of a kind permitted by the regulations.
80	(3) In exercising the power to make changes, the Minister may have
31	regard to any matters that the Minister considers appropriate.
32	(4) At the end of the period of 20 business days referred to in
33	subsection (1), the list, as changed (if at all) by the Minister,
34	becomes the finalised priority assessment list for the assessment
35	period.

1 2		(5) The Minister must notify the Australian Heritage Council of all changes that the Minister makes to the list.
3		(6) The finalised priority assessment list is not a legislative instrument.
4	341JE	Publication of finalised priority assessment list
5 6		(1) The Australian Heritage Council must publish the finalised priority assessment list for an assessment period on the Internet.
7 8 9		(2) The Australian Heritage Council must also publish the finalised priority assessment list in accordance with any requirements of the regulations.
10 11	341JF	Australian Heritage Council to invite comments on places in finalised priority assessment list
12 13 14 15		(1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must publish a notice inviting people to make comments on the place.
16 17 18 19		(2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.
20 21 22 23 24		 (3) A notice under subsection (1), in relation to a place or places: (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and (b) must identify the place or places to which the notice relates; and
25 26 27 28 29 30		 (c) must invite people to make comments, to the Australian Heritage Council, about: (i) whether the place or places meet any of the Commonwealth Heritage criteria; and (ii) whether the place or places should be included in the Commonwealth Heritage List; and
31 32 33 34		(d) must specify the date (the <i>cut-off date</i>) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and

1 2 3	(e) must specify, or refer to, the manner and form re that, under regulations referred to in paragraph (to making comments; and	•
4 5	(f) may also invite people to comment on other mat Australian Heritage Council considers appropria	
6 7	(g) may also include any other information that the Heritage Council considers appropriate.	
8	(4) The regulations must provide for the following:	
9	(a) how a notice under subsection (1) is to be publis	shed;
10	(b) the manner and form for making comments.	
11 12	341JG Australian Heritage Council to assess places on fin priority assessment list and give assessments to	
13	(1) In relation to each place included in the finalised prior	rity
14	assessment list for an assessment period, the Australia	•
15	Council must (by the time required by section 341JH)	
16	(a) make a written assessment whether the place me	eets any of
17	the Commonwealth Heritage criteria; and	
18	(b) give to the Minister:	
19	(i) the written assessment (or a copy of it); and	d
20	(ii) a copy of the comments referred to in paragraph	
21 22	and (b) (whether or not they have all been account under subsection (2)).	taken into
23 24	(2) In making an assessment in relation to a place, the Au Heritage Council, subject to subsections (3) and (4):	stralian
25	(a) must take into account the comments the Counc	il receives in
26	response to the notice under subsection 341JF(1	
27	to the place; and	,
28	(b) may take into account the comments the Counci	l receives in
29	response to the opportunity referred to in paragr	
30	and	
31	(c) may seek, and have regard to, information or ad	vice from any
32	source.	
33	(3) The Australian Heritage Council is not required to tak	e a comment
34	referred to in paragraph (2)(a) into account if:	

1 2	(a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 341JF(1)
3	in relation to the place; or
4	(b) the Council considers that regulations referred to in
5	paragraph 341JF(4)(b) have not been complied with in
6	relation to the comment.
7	(4) In making an assessment, the Australian Heritage Council must not
8	consider any matter that does not relate to the question whether the
9	place meets any of the Commonwealth Heritage criteria.
10	(5) If, in making an assessment, the Australian Heritage Council
11	considers that a place within the Australian jurisdiction might have
12	one or more Commonwealth Heritage values, the Council must:
13	(a) take all practicable steps:
14	(i) to identify each person who is an owner or occupier of
15	all or part of the place; and
16	(ii) if the Council considers the place might have an
17	indigenous heritage value—to identify each Indigenous
18	person who has rights or interests in all or part of the
19	place; and
20	(b) take all practicable steps to advise each person identified that
21	the Council is assessing whether the place meets any of the
22	Commonwealth Heritage criteria; and
23	(c) give persons advised at least 20 business days to comment in
24	writing whether the place should be included in the
25	Commonwealth Heritage List.
26	(6) If the Australian Heritage Council is satisfied that there are likely
27	to be at least 50 persons referred to in subparagraph (5)(a)(i), the
28	Council may satisfy the requirements of subsection (5) in relation
29	to those persons by including the information referred to in
30	paragraphs (5)(b) and (c) in one or more of the following:
31	(a) advertisements in a newspaper, or newspapers, circulating in
32	the area in which the place is located;
33	(b) letters addressed to "The owner or occupier" and left at all
34	the premises that are wholly or partly within the place;
35	(c) displays in public buildings at or near the place.
36	(7) If:

1			(a) the Australian Heritage Council considers that the place
2			might have an indigenous heritage value; and
3			(b) there are Indigenous persons who:
4			(i) have rights or interests in all or part of the place; and
5			(ii) are neither owners nor occupiers of all or part of the
6			place; and
7			(c) the Australian Heritage Council is satisfied that there is a
8			body, or there are bodies, that can appropriately represent
9 10			those Indigenous persons in relation to those rights and interests;
11			the Australian Heritage Council may satisfy the requirements of
12			subsection (5) in relation to those Indigenous persons by giving the
13			information referred to in paragraphs (5)(b) and (c) to that body or
14			those bodies.
15	3/1 IH	Ti	me by which assessments to be provided to Minister
15	371311	1 11	he by which assessments to be provided to winnster
16		(1)	Subsection 341JG(1) must be complied with, in relation to a place
17			included in the finalised priority assessment list for an assessment
18			period, by the assessment completion time specified in the list for
19			the place, or by that time as extended under this section.
20		(2)	The Australian Heritage Council may request the Minister to
21			extend the assessment completion time (or that time as previously
22			extended) if the Council considers that it needs more time to make
23			the assessment.
24		(3)	The Minister may, in response to a request under subsection (2),
25			extend the assessment completion time (or that time as previously
26			extended) by such period (if any) as the Minister considers
27			appropriate. However, the total length of all extensions of the
28			assessment completion time must not be more than 5 years.
29		(4)	An extension under subsection (3) must be made in writing.
30		(5)	If the Minister grants an extension under this section, the Minister
31			must publish particulars of the extension in a way that the Minister
32			considers appropriate.

1 2	341JI Decision about inclusion of a place in the Commonwealth Heritage List
3	Minister to decide whether or not to include place
4 5	(1) After receiving from the Australian Heritage Council an assessment under section 341JG whether a place (the <i>assessed</i>
6 7	place) meets any of the Commonwealth Heritage criteria, the Minister must:
8 9	(a) by instrument published in the <i>Gazette</i> , include in the Commonwealth Heritage List:
10	(i) the assessed place or a part of the assessed place; and
11 12 13	(ii) the Commonwealth Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or
14 15	(b) in writing, decide not to include the assessed place in the Commonwealth Heritage List.
16 17 18	Note: The Minister may include a place in the Commonwealth Heritage List only if the Minister is satisfied that the place has one or more Commonwealth Heritage values (see subsection 341C(2)).
19 20 21	(2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
22 23	(3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
24 25 26	(4) Particulars of an extension or further extension under subsection (3) must be published on the Internet and in any other way required by regulations.
27 28	(5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:
29	(a) the Minister must have regard to:
30 31	(i) the Australian Heritage Council's assessment whether the assessed place meets any of the Commonwealth
32	Heritage criteria; and
33	(ii) the comments (if any), a copy of which were given to
34 35	the Minister under subsection 341JG(1) with the assessment; and

1 2	(b) the Minister may seek, and have regard to, information or advice from any source.
2	·
3	Additional requirements if Minister decides to include place
4	(6) If the Minister includes the assessed place, or a part of the assessed
5	place (the <i>listed part of the assessed place</i>), in the Commonwealth
6	Heritage List, he or she must, within a reasonable time:
7	(a) take all practicable steps to:
8	(i) identify each person who is an owner or occupier of all
9	or part of the assessed place; and
10	(ii) advise each person identified that the assessed place, or
11	the listed part of the assessed place, has been included
12	in the Commonwealth Heritage List; and
13	(b) if the assessed place:
14	(i) was nominated; or
15	(ii) was included in a place that was nominated; or
16	(iii) includes a place that was nominated;
17	by a person in response to a notice under subsection
18	341H(1)—advise the person that the assessed place, or the
19	listed part of the assessed place, has been included in the
20	Commonwealth Heritage List; and
21	(c) publish a copy of the instrument referred to in
22	paragraph (1)(a) on the Internet; and
23	(d) publish a copy or summary of that instrument in accordance
24	with any other requirements specified in the regulations.
25	(7) Paragraph (6)(a) does not apply unless the assessed place is within
26	the Australian jurisdiction.
27	(8) If the Minister is satisfied that there are likely to be at least 50
28	persons referred to in subparagraph (6)(a)(i), the Minister may
29	satisfy the requirements of that paragraph in relation to those
30	persons by including the advice referred to in that paragraph in one
31	or more of the following:
32	(a) advertisements in a newspaper, or newspapers, circulating in
33	the area in which the assessed place is located;
34	(b) letters addressed to "The owner or occupier" and left at all
35	the premises that are wholly or partly within the assessed
36	place;
37	(c) displays in public buildings at or near the assessed place.

1	1	Additional requ	uirements if Minister decides not to include place
2			decides not to include the assessed place in the heritage List, the Minister must, within 10
4			Ifter making the decision:
5			ne decision on the Internet; and
6		(b) if the asse	
7			nominated; or
8		. ,	included in a place that was nominated; or
9			udes a place that was nominated;
10			on in response to a notice under subsection
11		• •	-advise the person of the decision, and of the
12			or the decision.
13	I	Note: Subsec	ction (9) applies in a case where the Minister decides that none
14			assessed place is to be included in the Commonwealth Heritage
15		List.	
16	Subdivisio	n BB—Inclu	usion of places in the Commonwealth
17]	Heritage Lis	st: emergency process
			~ · ·
		<u> </u>	
18		plified outline	e
	341JJ Sim	_	e is a simplified outline of this Subdivision:
19	341JJ Sim	The following i	is a simplified outline of this Subdivision:
	341JJ Simp	The following i	is a simplified outline of this Subdivision: on sets out the emergency process for the inclusion
19 20	341JJ Simp	The following i	is a simplified outline of this Subdivision:
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19 20 21 22 23 24	341JJ Sim	The following in This Subdivision of places in the The emergency	on sets out the emergency process for the inclusion Commonwealth Heritage List. process involves the following steps: the Minister may include a place in the Commonwealth Heritage List if it is under threat
19 20 21 22 23	341JJ Sim	The following in This Subdivision of places in the The emergency	on sets out the emergency process for the inclusion Commonwealth Heritage List. process involves the following steps: the Minister may include a place in the
19 20 21 22 23 24	341JJ Sim	The following in This Subdivision of places in the The emergency	on sets out the emergency process for the inclusion Commonwealth Heritage List. process involves the following steps: the Minister may include a place in the Commonwealth Heritage List if it is under threat (see section 341JK); the Minister asks the Australian Heritage Council
19 20 21 22 23 24 25	341JJ Sim	The following in This Subdivision of places in the The emergency (a)	on sets out the emergency process for the inclusion Commonwealth Heritage List. process involves the following steps: the Minister may include a place in the Commonwealth Heritage List if it is under threat (see section 341JK);
20 21 22 23 24 25 26 27	341JJ Sim	The following in the This Subdivision of places in the The emergency (a)	on sets out the emergency process for the inclusion Commonwealth Heritage List. process involves the following steps: the Minister may include a place in the Commonwealth Heritage List if it is under threat (see section 341JK); the Minister asks the Australian Heritage Council to assess the place (see section 341JL);
220 221 222 23 224 225 26 27 28	341JJ Sim	The following in This Subdivision of places in the The emergency (a)	on sets out the emergency process for the inclusion Commonwealth Heritage List. process involves the following steps: the Minister may include a place in the Commonwealth Heritage List if it is under threat (see section 341JK); the Minister asks the Australian Heritage Council to assess the place (see section 341JL); the Australian Heritage Council publishes notice of
20 21 22 23 24 25 26 27	341JJ Sim	The following in the This Subdivision of places in the The emergency (a)	on sets out the emergency process for the inclusion Commonwealth Heritage List. process involves the following steps: the Minister may include a place in the Commonwealth Heritage List if it is under threat (see section 341JK); the Minister asks the Australian Heritage Council to assess the place (see section 341JL);

1 2			(d)	the Australian Heritage Council assesses the place, and gives the assessment to the Minister (see
3				sections 341JN and 341JO);
4			(e)	the Minister has 12 months from the listing of the
5			(0)	place to decide whether it should continue to be
6				listed, and the listing will lapse if the Minister does
7				not make a decision within that period (see
8				section 341JP).
	L			
9	341JK Mi	inister	mav in	clude place in Commonwealth Heritage List
0			er thre	•
	(1)	TC 4 N	<i>x</i> · · .	1 1
1	(1)			believes:
12				as or may have one or more Commonwealth
13			•	values; and
14 15			my of the mpact; a	ose values is under threat of a significant adverse
16			-	t is both likely and imminent;
17				ay, by instrument published in the <i>Gazette</i> , include
18				wealth Heritage List the place and the
9				h Heritage values the Minister believes the place has
20		or may		
21 22		Note:		nich places can be included in the Commonwealth Heritage List, osection 341C(2).
	(2)	T.C.		
23	(2)	If:		
24			_	is included in the Commonwealth Heritage List
25				osection (1); and
26				at inclusion of the place, the place was being
27 28				ed for inclusion in the List under the process set out rision BA:
29				,
39 80		_		ases to apply to the place when it is included in the ection (1).
81 82		Note:		etion (2) does not prevent the process in Subdivision BA again g to apply to the place if (for example) the place ceases to be
33				because of subsection 341JP(1) or (4) and a person subsequently
34			nomin	ates the place under that Subdivision.
35	(3)	If the r	olace is in	ncluded in the Commonwealth Heritage List under
36	(-)	•		the Minister must:
			. ,,	

1 2	(a) in any case—within 10 business days after the inclusion of the place, publish a copy of the instrument under
3	subsection (1):
4	(i) on the Internet; and
5 6	(ii) in accordance with any other requirements specified in the regulations; and
7	(b) if the place is within the Australian jurisdiction—take all
8	practicable steps to:
9	(i) identify each person who is an owner or occupier of all
10	or part of the place; and
11	(ii) advise each person identified that the place has been
12	included in the Commonwealth Heritage List.
13	(4) If the Minister is satisfied that there are likely to be at least 50
14	persons referred to in subparagraph (3)(b)(i), the Minister may
15	satisfy the requirements of paragraph (3)(b) in relation to those
16	persons by including the advice referred to in that paragraph in one
17	or more of the following:
18	(a) advertisements in a newspaper, or newspapers, circulating in
19	the area in which the place is located;
20	(b) letters addressed to "The owner or occupier" and left at all
21	the premises that are wholly or partly within the place;
22	(c) displays in public buildings at or near the place.
23	341JL Minister to ask Australian Heritage Council for assessment
24	(1) If the Minister includes a place in the Commonwealth Heritage List
25	under section 341JK, the Minister must, in writing, request the
26	Australian Heritage Council to give the Minister an assessment of
27	whether the place meets any of the Commonwealth Heritage
28	criteria.
29	(2) The request must specify the assessment completion time for the
30	assessment.
31	Note: When specifying an assessment completion time, the 12-month period
32	referred to in subsection 341JP(1) should be considered.
33	341JM Publication of listing of place and inviting comments
34	(1) If the Australian Heritage Council receives a request under
35	subsection 341JL(1) in relation to a place that has been included in

1 2	the Commonwealth Heritage List, the Council must publish a notice inviting people to comment on the listing of the place.
3	(2) A notice under subsection (1) in relation to a place:
4	(a) must be published in accordance with the regulations referred
5	to in paragraph (3)(a); and
6	(b) must contain the following:
7	(i) a description of the place;
8	(ii) a statement that the place has been included in the
9	Commonwealth Heritage List, and that specifies the
10	Commonwealth Heritage values that have been included
11	in the List in relation to the place;
12	(iii) the date on which the place was so included; and
13	(c) must invite people to make comments, to the Australian
14	Heritage Council, about:
15	(i) whether the place meets any of the Commonwealth
16	Heritage criteria; and
17	(ii) whether the place should continue to be included in the
18	Commonwealth Heritage List; and
19	(d) must specify the date (the <i>cut-off date</i>) by which comments
20	must be received, which must be at least 30 business days
21	after the notice has been published as required by
22	paragraph (a); and
23	(e) must specify, or refer to, the manner and form requirements
24	that, under regulations referred to in paragraph (3)(b), apply to making comments.
25	to making comments.
26	(3) The regulations may provide for either or both of the following:
27	(a) how a notice under subsection (1) is to be published;
28	(b) the manner and form for making comments.
29	341JN Australian Heritage Council to assess place and give
30	assessment to Minister
	(1) Section 241 IC applies in relation to a request up denouhoostica
31	(1) Section 341JG applies in relation to a request under subsection 341JL(1) as if:
32	` '
33	(a) a reference in section 341JG to a place included in the finalised priority assessment list for an assessment period
34 35	were a reference to the place to which the request relates; and
55	were a reference to the place to which the request relates, and

1 2 3 4	(b) a reference in section 341JG to the notice under subsection 341JF(1) in relation to the place were a reference to the notice under subsection 341JM(1) in relation to the place; and
5 6 7	(c) a reference in section 341JG to regulations referred to in paragraph 341JF(4)(b) were a reference to regulations referred to in paragraph 341JM(3)(b); and
8 9 10 11	(d) a reference in section 341JG to whether the place should be included in the Commonwealth Heritage List were a reference to whether the place should continue to be included in the Commonwealth Heritage List.
12 13 14	(2) A reference in another provision of this Act to section 341JG, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.
15	341JO Time by which assessments to be provided to Minister
16 17	(1) Section 341JH applies in relation to a request under subsection 341JL(1) as if:
18 19 20	(a) a reference in section 341JH to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and
21 22 23	(b) a reference in section 341JH to the assessment completion time specified in the list for the place were a reference to the assessment completion time specified in the request.
24 25 26	(2) A reference in another provision of this Act to section 341JH, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.
27 28	341JP Decision about place remaining in the Commonwealth Heritage List
29	Minister to decide whether place should remain listed
30 31 32 33 34	 (1) Within 12 months after the inclusion of a place in the Commonwealth Heritage List under section 341JK, the Minister must, by instrument published in the <i>Gazette</i>, subject to subsections (2) and (3): (a) do one of the following:

1 2	(i) state that the place remains in the Commonwealth Heritage List with its boundary unaltered;
3	(ii) alter the boundary of the place described in the Commonwealth Heritage List (whether or not the
5 6	alteration results in an overall increase or decrease in the extent of the place included in the List);
7 8	(iii) remove from the Commonwealth Heritage List the place and its Commonwealth Heritage values; and
9 10	(b) if the place is not removed from the Commonwealth Heritage List under subparagraph (a)(iii)—do all or any of the
11	following:
12	(i) state that specified Commonwealth Heritage values
13 14	included in the List under section 341JK for the place remain in the List for the place;
15	(ii) include in the List for the place specified
16	Commonwealth Heritage values of the place that were
17	not included in the List under section 341JK for the
18	place;
19	(iii) remove from the List for the place specified
20 21	Commonwealth Heritage values that were included in the List under section 341JK for the place.
22	(2) The Minister must not take action under subsection (1) unless the
23 24	Minister has received an assessment from the Australian Heritage Council under section 341JG in relation to the place.
25	(3) The Minister must not take action under subsection (1) that results
26	in the place remaining in the Commonwealth Heritage List
27	(whether or not with the same or a different boundary) unless the Minister is satisfied that the place has one or more Commonwealth
28 29	Heritage values.
30	Listing lapses automatically if action not taken within 12 months of
31	listing
32	(4) If the Minister does not take action under subsection (1) within the
33	period referred to in that subsection, the place, and its listed
34	Commonwealth Heritage values, are automatically removed from
35	the Commonwealth Heritage List, by force of this subsection, at
36	the end of that period.
37 38	Note: This subsection applies even if the Minister is prevented from taking action under subsection (1) because of subsection (2).

1	Matters to be considered
2	(5) For the purpose of deciding what action to take under
3	subsection (1) in relation to the place:
4	(a) the Minister must have regard to:
5	(i) the Australian Heritage Council's assessment whether
6	the place meets any of the Commonwealth Heritage
7	criteria; and
8	(ii) the comments (if any), a copy of which were given to
9 10	the Minister under subsection 341JG(1) with the assessment; and
11	(b) the Minister may seek, and have regard to, information or
12	advice from any source.
13	Disapplying section 341L
14	(6) Section 341L does not apply to:
15	(a) an alteration of the boundary of the place, under
16	subparagraph (1)(a)(ii) of this section, that has the effect of
17	removing part of the place from the Commonwealth Heritage
18	List; or
19	(b) the removal of the place and its Commonwealth Heritage
20	values under subparagraph (1)(a)(iii) of this section; or
21	(c) the removal of a Commonwealth Heritage value of the place
22	under subparagraph (1)(b)(iii) of this section.
23	Minister to publish copy or summary of subsection (1) notice
24	(7) The Minister must publish a copy or summary of the instrument
25	referred to in subsection (1). The regulations may specify how the
26	publication is to be made. Subject to any such regulations, the
27	publication must be made in a way that the Minister considers
28	appropriate.
29	Additional requirements if place etc. is removed under
30	subsection (1)
31	(8) If, under subsection (1), the Minister removes from the
32	Commonwealth Heritage List the place or a Commonwealth
33	Heritage value of the place, or alters the boundary of the place
34	described in the List, the Minister must, within 10 business days
35	after the removal or alteration:

(a) in any case—publish a copy of the instrument referred to in subsection (1) on the Internet; and (b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal or alteration. Note: For the obligation to identify owners or occupiers, see subsection 341JK(3). Requirements if place is removed under subsection (4) (9) If, under subsection (4), the place, and its listed Commonwealth Heritage List, the Minister must, within 10 business days after the removal: (a) in any case—publish notice of the removal on the Internet; and (b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal. Note: For the obligation to identify owners or occupiers, see subsection 341JK(3). Alternative methods of notifying owners and occupiers (10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Council may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following: (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located; (b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place; (c) displays in public buildings at or near the place. Subdivision BC—Other provisions relating to the Commonwealth Heritage List 341JQ Co-ordination with Scientific Committee—Council undertaking assessment (1) This section applies if:		
(b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal or alteration. Note: For the obligation to identify owners or occupiers, see subsection 341JK(3). Requirements if place is removed under subsection (4) (9) If, under subsection (4), the place, and its listed Commonwealth Heritage values, are removed from the Commonwealth Heritage List, the Minister must, within 10 business days after the removal: (a) in any case—publish notice of the removal on the Internet; and (b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal. Note: For the obligation to identify owners or occupiers, see subsection 341JK(3). Alternative methods of notifying owners and occupiers (10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Council may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following: (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located; (b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place; (c) displays in public buildings at or near the place. Subdivision BC—Other provisions relating to the Commonwealth Heritage List 341JQ Co-ordination with Scientific Committee—Council undertaking assessment		* * * * * * * * * * * * * * * * * * *
all or part of the place of the removal or alteration. Note: For the obligation to identify owners or occupiers, see subsection 341JK(3). Requirements if place is removed under subsection (4) [9] If, under subsection (4), the place, and its listed Commonwealth Heritage values, are removed from the Commonwealth Heritage List, the Minister must, within 10 business days after the removal: [12] (a) in any case—publish notice of the removal on the Internet; and [13] (b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal. Note: For the obligation to identify owners or occupiers, see subsection 341JK(3). Alternative methods of notifying owners and occupiers [16] (10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Council may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following: [17] (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located; [18] (b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place; [18] (c) displays in public buildings at or near the place. Subdivision BC—Other provisions relating to the Commonwealth Heritage List 341JQ Co-ordination with Scientific Committee—Council undertaking assessment		(b) if the place is within the Australian jurisdiction—advise each
Requirements if place is removed under subsection (4) (9) If, under subsection (4), the place, and its listed Commonwealth Heritage values, are removed from the Commonwealth Heritage List, the Minister must, within 10 business days after the removal: (a) in any case—publish notice of the removal on the Internet; and (b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal. Note: For the obligation to identify owners or occupiers, see subsection 341JK(3). Alternative methods of notifying owners and occupiers (10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Council may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following: (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located; (b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place; (c) displays in public buildings at or near the place. Subdivision BC—Other provisions relating to the Commonwealth Heritage List 341JQ Co-ordination with Scientific Committee—Council undertaking assessment		
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(a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located; (b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place; (c) displays in public buildings at or near the place. Subdivision BC—Other provisions relating to the Commonwealth Heritage List 341JQ Co-ordination with Scientific Committee—Council undertaking assessment	23	
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the premises that are wholly or partly within the place; (c) displays in public buildings at or near the place. Subdivision BC—Other provisions relating to the Commonwealth Heritage List 341JQ Co-ordination with Scientific Committee—Council undertaking assessment		
29 (c) displays in public buildings at or near the place. 30 Subdivision BC—Other provisions relating to the Commonwealth Heritage List 31 341JQ Co-ordination with Scientific Committee—Council undertaking assessment	27	(b) letters addressed to "The owner or occupier" and left at all
Subdivision BC—Other provisions relating to the Commonwealth Heritage List 341JQ Co-ordination with Scientific Committee—Council undertaking assessment	28	the premises that are wholly or partly within the place;
Commonwealth Heritage List 341JQ Co-ordination with Scientific Committee—Council undertaking assessment	29	(c) displays in public buildings at or near the place.
Commonwealth Heritage List 341JQ Co-ordination with Scientific Committee—Council undertaking assessment	30	Subdivision BC—Other provisions relating to the
undertaking assessment	31	
undertaking assessment	32	341.IO Co-ordination with Scientific Committee—Council
(1) This section applies if:		
	34	(1) This section applies if:

1 2	(a) the Australian Heritage Council undertakes an assessment of a place under Subdivision BA or Subdivision BB; and
3	(b) before giving the assessment to the Minister, the Council
4	becomes aware that:
5	(i) the Scientific Committee is undertaking, or has
6 7	undertaken, an assessment under Division 1 of Part 13; and
8	(ii) there is a matter that is relevant to both the assessment
9	referred to in paragraph (a) and the assessment referred
10	to in subparagraph (i).
11	(2) A member of the Australian Heritage Council may discuss the
12	matter with a member of the Scientific Committee.
13	(3) Before the Australian Heritage Council gives an assessment of the
14	place to the Minister under Subdivision BA or Subdivision BB, the
15	Council must comply with subsection (4) or (6).
16	(4) If the Scientific Committee has not yet given the Minister an
17	assessment that deals with that matter, the Australian Heritage
18	Council must:
19	(a) give the Scientific Committee a copy of the assessment of the
20	place that the Council proposes to give to the Minister; and
21	(b) invite the Scientific Committee to give the Council its
22	comments in relation to that matter; and
23	(c) take into account, in finalising the assessment of the place
24	that the Council gives the Minister, any comments that the Scientific Committee makes in relation to that matter in
25 26	response to that invitation within 14 days, or such longer
27 27	period as is specified in the invitation, after being given the
28	invitation.
29	(5) If the Australian Heritage Council gives the Scientific Committee a
30	copy of a proposed assessment of a place under paragraph (4)(a),
31	the Council must also give the Scientific Committee a copy of the
32	assessment of that place that the Council gives the Minister.
33	(6) If:
34	(a) the Scientific Committee has already given the Minister an
35	assessment that deals with that matter; and
36	(b) the Australian Heritage Council has been given a copy of that
37	assessment;

1 2 3		the Australian Heritage Council must take that assessment into account in finalising the assessment of the place that the Council gives the Minister.
4 5 6 7	((7) If, under section 194S or 194T, the Scientific Committee gives the Australian Heritage Council a proposed assessment, or an assessment, that deals with a particular matter because the Council is undertaking an assessment that deals with that matter, a member
8 9		of the Council may discuss that matter with a member of the Scientific Committee.
10 11	((8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 341R.
12 13	341JR	Co-ordination with Scientific Committee—Council given assessment to Minister
14	((1) This section applies if:
15		(a) the Australian Heritage Council has given to the Minister an
16		assessment of a place under Subdivision BA or Subdivision
17		BB; and
18		(b) the Council is aware that:
19 20		(i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and
21		(ii) there is a matter that is relevant to both the assessment
22		referred to in paragraph (a) and the assessment referred
23		to in subparagraph (i).
24	((2) The Australian Heritage Council must, within 7 days after
25		becoming aware as referred to in paragraph (1)(b):
26		(a) ensure the Scientific Committee is aware of the existence of
27		the paragraph (1)(a) assessment dealing with the matter; and
28		(b) give the Scientific Committee a copy of the assessment.
29	((3) A member of the Australian Heritage Council may discuss the
30		matter with a member of the Scientific Committee.
31	((4) Subsections (2) and (3) have effect despite section 341R.
32	568 Su	bsection 341K(1)
33	C	Omit "this Subdivision that is before this section and", substitute
34	"	Subdivision BA or BB".

1	569 Subsection 341K(1)
2 3	Omit "an earlier provision of this Subdivision", substitute "an earlier provision of that Subdivision".
4	570 Subsection 341L(2) (note)
5	Omit "341J(5)", substitute "341JP(1)".
6	571 Section 341N
7	Repeal the section, substitute:
8	341N Specifying one or more additional Commonwealth Heritage values for a Commonwealth Heritage place
10 11 12 13	(1) The regulations may make provision for, or in relation to, the specification in the Commonwealth Heritage List of additional Commonwealth Heritage values in relation to Commonwealth Heritage places.
14 15 16 17	(2) Without limiting the generality of subsection (1), regulations may make provision as mentioned in that subsection by specifying modifications of provisions of this Act. However, regulations must not:
18 19 20 21	(a) increase, or have the effect of increasing, the maximum penalty for any offence; or(b) widen, or have the effect of widening, the scope of any offence.
22	(3) In this section:
23	modifications includes additions, omissions or substitutions.
24	572 Paragraph 341R(1)(a)
25	Omit "341G", substitute "341JG".
26	573 Paragraph 341R(2)(a)
27	Repeal the paragraph, substitute:
28	(a) the duty not to disclose a thing described in paragraph (1)(a)
29	in relation to a place does not exist after:
30	(i) publication in the <i>Gazette</i> of an instrument under
31	paragraph 341JI(1)(a) or subsection 341JP(1) in relation
32	to the place; or

1 2 3		(ii) the Minister decides under paragraph 341JI(1)(b) not to include the place in the Commonwealth Heritage List; and
4	574	Subparagraph 341R(2)(b)(ii)
5 6 7 8 9		Repeal the subparagraph, substitute: (ii) the Minister decides under section 341M not to remove the place or a part of the place, or one or more of the place's Commonwealth Heritage values, from the Commonwealth Heritage List.
.0	575	After subsection 341R(2)
.1		Insert:
12 13		(2A) This section does not prevent the Australian Heritage Council from informing a person, or having discussions with a person, about the consequences that result or may result from:
.5		(a) a place being, or not being, included in the Commonwealth Heritage List; or
.7		(b) Commonwealth Heritage values of a place being, or not being, included in the List; or
9		(c) a place or part of a place, or one or more Commonwealth Heritage values of a place, being removed from the List.
21 22		(2B) Subsection (1) does not apply to a disclosure of particular information if:
23 24 25 26		(a) the Chair of the Australian Heritage Council requests the Minister to give permission to disclose that information to a particular person (or persons within a particular group of persons); and
27		(b) the Minister gives that permission; and
28 29		(c) the disclosure is made to that person (or a person within that group).
80	576	Paragraph 341R(3)(a)
31		Omit "341G", substitute "341JG".
32	577	At the end of section 341S
33		Add:

	(8) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument.
578	Subsection 341T(1) (note)
5 70	Repeal the note.
579	Section 341ZD Repeal the section.
580	Subdivision F of Division 3A of Part 15
300	Repeal the Subdivision.
581	Paragraph 346(1)(e)
	Repeal the paragraph, substitute:
	(e) assign the reserve to a category (an <i>IUCN category</i>)
	prescribed in regulations made for the purposes of this subsection.
582	Subsection 347(1)
	Omit "(1)".
Note:	The heading to subsection 347(1) is deleted.
583	Subparagraph 347(1)(a)(i)
	Repeal the subparagraph, substitute:
	(i) has the characteristics (if any) prescribed by the regulations for the category; and
584	Subsection 347(2)
	Repeal the subsection.
585	Section 349
	Repeal the section.
586	Subsection 354(1) (note)
	Repeal the note.
587	After subsection 354(1)
	Insert:
	579 580 581 582 Note: 583 584 585 586

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

1 2		(1A) Subsection (1) does not apply to an action taken in the course of carrying on mining operations.
3		Note: Mining operations are covered by sections 355, 355A and 387.
4	588	Subsection 354(2) (note)
5		Repeal the note.
6	589	After subsection 354(3)
7		Insert:
8 9 10		(3A) Subsection (1) does not apply to an action that is covered by an approval in force under subsection 359B(1). For this purpose, an action is covered by such an approval if:
11 12		(a) a management plan is not in operation for the Commonwealth reserve; and
13 14		(b) the action is, or is in the class of actions, specified in the approval; and
15 16 17		(c) the action is taken in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.
18	590	Subparagraph 354(4)(a)(ii)
19		Repeal the subparagraph, substitute:
20 21		(ii) section 359A (about traditional use of an area in a reserve); and
22	591	After section 354
23		Insert:
24 25	354 A	A Offences relating to activities that may only be carried on under management plan
26		Causing death etc to native species or damage to heritage
27		(1) A person commits an offence if:
28		(a) the person takes an action; and
29		(b) the action is taken in a Commonwealth reserve; and
30		(c) the action:

1 2 3	 (i) results in the death, injury, taking, trade, keeping or moving of a member of a native species in the reserve; or
4	(ii) results in damage to heritage in the reserve.
5	Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.
6 7	Note 1: Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.
8 9 10	Note 2: Subsection 4B(3) of the <i>Crimes Act 1914</i> lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.
11	(2) Strict liability applies:
12	(a) to paragraph (1)(b); and
13	(b) to the physical element of circumstance in paragraph (1)(c),
14 15	that the member of the native species or the heritage is in the reserve.
16	Note: For <i>strict liability</i> , see section 6.1 of the <i>Criminal Code</i> .
17	Erection of buildings etc.
18	(3) A person commits an offence if:
19	(a) the person takes any of the following actions:
20	(i) erecting a building or structure;
21	(ii) carrying on an excavation;
22	(iii) carrying out works; and
23	(b) the action is taken in a Commonwealth reserve.
24	Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.
25 26	Note 1: Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.
27 28 29	Note 2: Subsection 4B(3) of the <i>Crimes Act 1914</i> lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.
30	(4) Strict liability applies to paragraph (3)(b).
31	Note: For <i>strict liability</i> , see section 6.1 of the <i>Criminal Code</i> .
32	Actions taken for commercial purposes
33	(5) A person commits an offence if:
34	(a) the person takes an action; and

1		(b) the	person takes the action for a commercial purpose; and
2		(c) the	action is taken in a Commonwealth reserve.
3		Penalty:	Imprisonment for 2 years or 1,000 penalty units, or both.
4 5		Note 1:	Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.
6 7 8		Note 2:	Subsection 4B(3) of the <i>Crimes Act 1914</i> lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.
9	(6)	Paragrap	h (5)(b) states the fault element for paragraph (5)(a).
10	(7)	Strict lial	bility applies to paragraph (5)(c).
11		Note:	For <i>strict liability</i> , see section 6.1 of the <i>Criminal Code</i> .
12		Exception	n for actions in accordance with a management plan
13 14 15	(8)	is in acco	ons (1), (3) and (5) do not apply to an action if the action ordance with a management plan in operation for the awealth reserve in which the action is taken.
16 17		Note 1:	The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
18 19		Note 2:	This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).
20		Exception	n for mining operations
21 22	(9)		ons (1), (3) and (5) do not apply to an action if the action n the course of carrying on mining operations.
23		Note 1:	Mining operations are covered by sections 355, 355A and 387.
24 25		Note 2:	The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
26 27		-	n for certain actions taken by the Director—actions in her than Kakadu, Uluru or Jervis Bay
28 29	(10)	Subsection Director	ons (1), (3) and (5) do not apply to an action taken by the if:
30 31			nanagement plan is not in operation for the mmonwealth reserve in which the action is taken; and
32 33			action is not taken in the Kakadu region, the Uluru region the Jervis Bay Territory; and
34			Director takes the action for the purpose of:

1		(i)	preserving or protecting the reserve; or
2		(ii)	protecting or conserving biodiversity or heritage in the
3			reserve; or
4		(iii)	controlling authorised scientific research; or
5		(iv)	protecting persons or property in the reserve; or
6		(v)	managing the effects of actions taken under a usage
7			right described in section 359.
8 9			The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
10 11			This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).
12		Exception	for certain actions taken by the Director—conduct in
13			Jluru or Jervis Bay
14 15	(11)		ns (1), (3) and (5) do not apply to an action taken by the n accordance with section 385.
			The defendant bears an evidential burden in relation to the matters in
16 17			this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
18		Exception	for prior usage rights
19	(12)	Subsection	ns (1), (3) and (5) do not apply to an action that is
20	()		y a usage right, or a right arising out of a usage right, to
21		which sec	tion 359 applies.
22 23			The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
24 25			This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).
26		Exception	for prior traditional use
27	(13)	Subsection	ns (1), (3) and (5) do not apply to an action that is
28		covered by	y section 359A.
29			The defendant bears an evidential burden in relation to the matters in
30		1	this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
31		Exception	for actions approved under section 359B
32	(14)	Subsection	ns (1), (3) and (5) do not apply to an action that is
33			y an approval in force under subsection 359B(1). For this
34		purpose, a	an action is covered by such an approval if:

1 2	(a) a management plan is not in operation for the Commonwealth reserve; and
3	(b) the action is, or is in the class of actions, specified in the approval; and
5 6 7	(c) the action is taken in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.
8 9	Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
10	Actions in the Antarctic
11 12	(15) Subsections (1), (3) and (5) do not apply to an action taken in the Antarctic if:
13 14	(a) taking the action is an element of an offence under the <i>Antarctic Treaty (Environment Protection) Act 1980</i> ; and
15 16	(b) the person has a defence under that Act in relation to the offence.
17 18	Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
19 20 21 22	(16) The exceptions in subsections (8), (10) and (12) of this section do not apply in relation to an action taken in the Antarctic if taking the action is an element of an offence under the <i>Antarctic Treaty</i> (Environment Protection) Act 1980.
23 24 25 26 27	Note: Although the exception in subsection (9) can still apply, mining operations in the Antarctic are prohibited in any case under the <i>Antarctic Treaty (Environment Protection) Act 1980.</i> The exceptions in subsections (11) and (13) cannot apply to actions taken in the Antarctic.
28	Sentencing restriction for offences in the exclusive economic zone
29 30	(17) A court must not impose a sentence of imprisonment on a person for an offence under subsection (1) or (5) if:
31 32	(a) fishing (as defined in the <i>Fisheries Management Act 1991</i>) constituted a physical element of the offence; and
33	(b) the fishing was done:
34	(i) in the exclusive economic zone; and
35 36	(ii) otherwise than from an Australian vessel (or a vessel declared to be an Australian boat under subsection 4(2)
37	of the Fisheries Management Act 1991); and

1 2 3 4		(c) at the time of the fishing, the person was not an Australian citizen or a person who held a permanent visa under the <i>Migration Act 1958</i> and was domiciled in Australia or an external territory.
5		Section has effect despite other laws
6 7		(18) Except as provided in this section, this section has effect despite any other law of the Commonwealth or of a State or Territory.
8	592	Subsection 355(1)
9		Repeal the subsection, substitute:
10 11 12		(1) A person must not carry on mining operations in a Commonwealth reserve except in accordance with a management plan in operation for the reserve.
13		Civil penalty:
14		(a) for an individual—500 penalty units;
15		(b) for a body corporate—5,000 penalty units.
16 17		(1A) Subsection (1) does not apply in relation to the Kakadu National Park or the Antarctic.
18 19 20 21		Note: Section 387 generally prohibits mining operations in the Kakadu National Park. Sections 19A and 19B of the <i>Antarctic Treaty</i> (<i>Environment Protection</i>) <i>Act 1980</i> prohibit mining activities in the Antarctic.
22	593	After subsection 355(3)
23		Insert:
24		(3A) Subsection (1) does not apply to mining operations that are covered
25		by an approval in force under subsection 359B(2). For this
26		purpose, mining operations are covered by such an approval if:
27		(a) a management plan is not in operation for the
28		Commonwealth reserve; and
29 30		(b) the mining operations are, or are in the class of mining operations, specified in the approval; and
31		(c) the mining operations are carried on in accordance with the
32		approval by the person, or a person in the class of persons,
33		specified in the approval in the area specified in the approval.

1	594 Pa	ragraphs	355(5)(b) and (c)	
2	R	Repeal the paragraphs, substitute:		
3			etion 359A (about traditional use of an area in a reserve);	
4	595 Aft	er sectio	n 355	
5	Ir	isert:		
6	355A O	ffence rela	ting to mining operations	
7		Offence	of carrying on mining operations	
8	(1) A persor	n commits an offence if:	
9		(a) the	e person carries on mining operations; and	
10 11			e mining operations are carried on in a Commonwealth serve.	
12		Penalty:	Imprisonment for 2 years or 1,000 penalty units, or both.	
13 14		Note 1:	Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.	
15 16 17		Note 2:	Subsection 4B(3) of the <i>Crimes Act 1914</i> lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.	
18	(2) Strict lia	bility applies to paragraph (1)(b).	
19		Note:	For strict liability, see section 6.1 of the Criminal Code.	
20	(doubt, subsection (1) does not prevent the doing of	
21			for the purposes of building or construction, or the supply	
22			, in a Commonwealth reserve unless the purposes are	
23		connecte	ed with, or incidental to, mining operations.	
24		Exceptio	on for mining operations carried on in accordance with a	
25		-	nent plan	
26	(1) Subsacti	on (1) does not apply to the carrying on of mining	
26 27	(ns in accordance with a management plan in operation for	
28			monwealth reserve in which the operations are carried on.	
29 30		Note:	The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .	

1		Exception	on in relation to Kakadu National Park and the Antarctic
2 3	(5)		ion (1) does not apply to the carrying on of mining ons in the Kakadu National Park or in the Antarctic.
4 5 6 7		Note 1:	Section 387 generally prohibits mining operations in the Kakadu National Park. Sections 19A and 19B of the <i>Antarctic Treaty</i> (<i>Environment Protection</i>) <i>Act 1980</i> prohibit mining activities in the Antarctic.
8 9		Note 2:	The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
10		Exception	on for prior usage rights
11 12 13	(6)	by a usa	ion (1) does not apply to mining operations that are covered ge right, or a right arising out of a usage right, to which 359 applies.
14 15		Note:	The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
16		Exception	on for prior traditional use
17 18	(7)	Subsection 3	ion (1) does not apply to an action that is covered by 359A.
19 20		Note:	The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .
21		Exception	on for mining operations approved under section 359B
22 23 24	(8)	by an ap	ion (1) does not apply to mining operations that are covered opproval in force under subsection 359B(2). For this, mining operations are covered by such an approval if:
25 26			management plan is not in operation for the ommonwealth reserve; and
27 28			e mining operations are, or are in the class of mining perations, specified in the approval; and
29 30		(c) the	e mining operations are carried on in accordance with the proval by the person, or a person in the class of persons,
31			ecified in the approval in the area specified in the approval.
32 33		Note:	The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal Code</i> .

1	Section has effect despite other laws
2 3	(9) Except as provided in this section, this section has effect despite any other law of the Commonwealth or of a State or Territory.
4	596 Paragraph 356(1)(j)
5	After "conduct", insert ", or prohibit certain kinds of conduct,".
6	597 After section 359A
7	Insert:
8	359B Director's approval of actions and mining operations when a management plan is not in operation
10	Approval of actions (other than mining operations)
11 12 13	(1) The Director may, in writing, approve the taking of a specified action or a specified class of actions, by a specified person or a specified class of persons, in a specified area that is or is part of a Commonwealth reserve, if:
15	(a) the Director is satisfied that:
16 17	(i) no management plan has yet come into operation for the reserve; and
18 19 20 21 22 23	(ii) immediately before the area became included in the reserve, the person, or the persons in the class of persons, held a usage right, or a right arising out of a usage right, that entitled the person or persons to take the action, or the actions in the class of actions, in the area; and
24 25	(iii) the usage right is not a right in relation to land or seabed to which section 359 applies; or
26	(b) the Director is satisfied that:
27 28 29	 (i) a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation; and
30 31 32 33 34	(ii) immediately before the management plan ceased to be in operation, the person, or the persons in the class of persons, were taking the action, or the actions in the class of actions, in the area without contravening section 354 or 354A; and

1	(iii) the action or class of actions is not mining operations.
2 3	Note 1: In exercising the power to give approvals, the Director must comply with section 357.
4 5	Note 2: If an action taken without approval would not contravene section 354 or 354A, the action does not need approval under this subsection.
6	Approval of mining operations
7	(2) The Director may, in writing, approve the carrying on of specified
8	mining operations, or a specified class of mining operations, by a
9	specified person or a specified class of persons, in a specified area
10	that is or is part of a Commonwealth reserve, if:
11 12	(a) the Director is satisfied that no management plan has yet come into operation for the reserve; or
13	(b) the Director is satisfied that a management plan for the
14	reserve has ceased to be in operation, and no further
15	management plan for the reserve has yet come into operation
16 17	Note 1: In exercising the power to give approvals, the Director must comply with section 357.
18 19	Note 2: If an action taken without approval would not contravene section 355 or 355A, the action does not need approval under this subsection.
20	Limits on approvals in relation to the Kakadu National Park and
21	the Antarctic
22	(3) The Director must not approve:
23	(a) an action in the Antarctic that would be an element of an
24	offence under the Antarctic Treaty (Environment Protection)
25	Act 1980 (whether or not a defence would be available under
26	that Act); or
27	(b) mining operations in the Kakadu National Park or the
28	Antarctic.
29	Approvals may be subject to conditions
30	(4) An approval given under subsection (1) or (2) may be expressed to
31	be subject to specified conditions.

1		When approvals come into force
2 3		(5) An approval given under subsection (1) or (2) comes into force on the day the Director gives the approval, or on a later day specified
4		in the approval.
5		Variation and revocation of approvals
6		(6) The Director may, in writing, vary or revoke an approval:
7 8		(a) under subsection (1)—if the Director considers that the action, or an action in the class of actions, to which the
9		approval relates is not being taken in accordance with the
10		approval; or
11 12		(b) under subsection (2)—if the Director considers that the mining operations, or mining operations in the class of
13 14		mining operations, to which the approval relates are not being carried on in accordance with the approval.
15		(7) An approval given under subsection (1) or (2), or a variation or
16		revocation of an approval, is not a legislative instrument.
17	598	Section 360
18		Repeal the section.
19	599	Subsection 367(5)
20		Repeal the subsection, substitute:
21		(5) A single management plan may be the management plan for more
22		than one Commonwealth reserve.
23	600	Section 373
24		Omit "7 years", substitute "10 years".
25	601	Subsection 379(1)
-		Cancer C. (1)
26		Repeal the subsection (but not the note), substitute:
26		Repeal the subsection (but not the note), substitute:
26 27		Repeal the subsection (but not the note), substitute: Appointment of persons
26 27 28		Repeal the subsection (but not the note), substitute: Appointment of persons (1) The Minister may, in writing, appoint a person on a part-time basis

1 2	(b) the Minister is satisfied that the person is a fit and proper person to be a member of the Board (see section 379A).		
3	602	602 After section 379	
4		Insert:	
5	379A	A Fit and proper person	
6 7 8 9		In determining for the purposes of this Subdivision whether a person is a fit and proper person to be a member of a Board, the Minister may have regard to the matters specified in regulations made for the purposes of this section. The Minister may also have regard to any other matter the Minister considers appropriate.	
11 12 13		Note: The question whether a person is a fit and proper person is relevant to subsection 379(1) (which is about appointments to Boards), and subsection 382(1A) (which is about termination of appointments).	
14	603	After subsection 382(1)	
15		Insert:	
16		Termination if person is not fit and proper	
17 18 19 20 21 22		(1A) The Minister must terminate the appointment of a member of a Board if the Minister is satisfied that the member is not a fit and proper person to be a member of the Board. For this purpose, in having regard to matters as mentioned in section 379A, the Minister may consider things that happened either before or after the member's appointment.	
23	604	Subsection 387(2)	
24 25		Omit "Subsection (1) and subsection 355(1) do not prevent", substitute "Subsection (1) does not prevent".	
26	605	After Chapter 5	
27		Insert:	

1 2	Chapter 5A—The List of Overseas Places of Historic Significance to Australia	
3 4 5	Part 15A—The List of Overseas Places of Historic Significance to Australia	
6 7	390K The List of Overseas Places of Historic Significance to Australia	
8 9 .0	(1) The Minister must keep a written record of places in accordance with this Part. The record is called the List of Overseas Places of Historic Significance to Australia.	•
.1	(2) The List of Overseas Places of Historic Significance to Australia not a legislative instrument.	is
.3	390L Inclusion of places in the List of Overseas Places of Historic Significance to Australia	
.5 .6 .7	(1) The Minister may, by notice published in the <i>Gazette</i> , include a place, and a statement of its historic significance to Australia, in the List of Overseas Places of Historic Significance to Australia i and only if:	f,
9 20 21	(a) the place is outside the Australian jurisdiction; and(b) the Minister is satisfied that the place is of outstanding historic significance to Australia.	
22 23 24	(2) The regulations may specify matters the Minister is to have regar to in considering whether he or she is satisfied as mentioned in paragraph (1)(b).	d
.5 .6 .7	390M Removal of places from the List of Overseas Places of Histor Significance to Australia or variation of statement of historic significance	ic
28 29 30	(1) The Minister may, by notice published in the <i>Gazette</i> , do either o the following in relation to a place that is included in the List of Overseas Places of Historic Significance to Australia:	f

1 2	(a) remove the place, and the statement of its historic significance to Australia, from the List;
3 4	(b) vary the statement of the place's historic significance to Australia.
5 6	(2) The regulations may specify matters the Minister is to have regard to in considering whether to take action under subsection (1).
7	390N Inviting comments from other Ministers before taking action
8 9	(1) Before taking action in relation to a place under section 390L or 390M, the Minister (the <i>Environment Minister</i>) must:
10 11	(a) inform the following other Ministers of the action the Environment Minister proposes to take:
12	(i) the Minister for Foreign Affairs;
13 14	(ii) any other Minister whom the Environment Minister believes should be informed; and
15 16	(b) invite those other Ministers to give the Environment Minister comments on the proposed action; and
17	(c) take any comments from those other Ministers into account.
18	(2) In this section:
19 20	Minister for Foreign Affairs means the Minister administering the Diplomatic Privileges and Immunities Act 1967.
21	390P Minister may ask Australian Heritage Council for advice etc.
22	(1) The Minister may ask the Australian Heritage Council for advice
23	relating to action that the Minister is considering taking under
24	section 390L or 390M in relation to a place, and may take that
25	advice into account in deciding what action (if any) to take under
26	that section in relation to the place.
27	(2) The Minister may also seek, and have regard to, information or
28	advice from any other source.
29	390Q List of Overseas Places of Historic Significance to Australia to
30	be publicly available
31	The Minister must ensure that:

1 2 3	(a) up-to-date copies of the List of Overseas Places of Historic Significance to Australia are available for free to the public on request; and
4	(b) an up-to-date copy of the List is available on the Internet.
5	390R Disclosure of Australian Heritage Council's assessments and advice
7 8 9 10	(1) A member of the Australian Heritage Council has a duty not to disclose advice under section 390P to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council.
11 12 13	(2) However, the duty not to disclose the advice does not exist after the Minister has decided whether to take the action to which the advice relates.
14	606 Subsection 391(3) (after table item 6)
15	Insert:
	6A 269AA whether or not to have a recovery plan for a listed threatened species or a listed threatened ecological community
16	607 Section 391A
17	Repeal the section.
18	608 Section 394
19	Repeal the section, substitute:
20	394 Wardens ex officio
21	By force of this section each of the following is a warden:
22	(a) each member or special member of the Australian Federal
23	Police;
24	(b) each officer of Customs.
25	609 Subsection 395(1)
26	After "police force", insert "or an officer of Customs".
27	610 At the end of subsection 397(1)

1	Add:
2	; (c) each officer of Customs.
3	611 Paragraph 397(3)(a)
4	Repeal the paragraph.
5	612 After Subdivision B of Division 1 of Part 17
6	Insert:
7	Subdivision BA—Exercise of powers of authorised officers
8	outside the territorial sea
9	399A Powers to be exercised consistently with UNCLOS
10	(1) This section applies in relation to the powers of an authorised
11	officer under this Part (including powers an authorised officer has
12	under or because of a search warrant or a monitoring warrant), to
13	the extent that the powers are otherwise permitted to be exercised:
14	(a) outside the territorial sea; and
15	(b) in relation to a person, aircraft or vessel, other than a person
16	aircraft or vessel of a kind referred to in any of paragraphs
17	5(3)(a) to (h).
18	(2) The powers of an authorised officer, to the extent to which this
19	section applies to them, must be exercised consistently with
20	Australia's rights and obligations under:
21	(a) UNCLOS; and
22	(b) any other international agreements specified in regulations
23	made for the purposes of this section.
24	(3) In this section:
25	UNCLOS means the United Nations Convention on the Law of the
26	Sea, done at Montego Bay on 10 December 1982.
27	Note: The text of the Convention is set out in Australian Treaty Series 1994
28 29	No. 31. In 2006, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the
30	AustLII Internet site (www.austlii.edu.au).
31	613 Division 2 of Part 17 (heading)
32	Repeal the heading, substitute:

Division 2—Boarding of vessels etc. and access to premises

614	Subsection	403(1)
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Repeal the subsection, substitute:

- (1) This section applies to:
 - (a) any Australian vessel or Australian aircraft, whether or not it is in the Australian jurisdiction; or
 - (b) any other vessel or aircraft, or any vehicle or platform, that is in the Australian jurisdiction.

615 Subsection 403(2)

After "platform" (first occurring), insert "to which this section applies".

616 Subsection 403(2)

Omit "evidential material", substitute "evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both".

617 After subsection 403(2)

Insert:

- (2A) An authorised officer who boards a vehicle, vessel, aircraft or platform under paragraph (2)(a) may require a person on the vehicle, vessel, aircraft or platform to:
 - (a) answer a question asked by the authorised officer; or
 - (b) give the authorised officer information requested by the authorised officer; or
 - (c) produce to the authorised officer records or documents kept on the vehicle, vessel, aircraft or platform.

618 Subsection 403(3)

Omit "which is in the territorial sea of Australia or an external Territory", substitute "to which this section applies".

619 Subsection 403(4)

Repeal the subsection, substitute:

(4) An authorised officer, or the person in command of a Commonwealth ship or of a Commonwealth aircraft, may require

1 2	the person in charge of an aircraft to which this section applies to bring the aircraft to the nearest airport in Australia or an external
3	Territory to which it is safe and practicable to bring the aircraft if:
4	(a) the authorised officer, or the person in command of the
5	Commonwealth ship or Commonwealth aircraft, suspects on
6	reasonable grounds that the aircraft has been used or
7	otherwise involved in the commission of an offence against
8	this Act or the regulations; and
9 10 11	(b) the requirement is made by means of an international signal code or other internationally recognised means of communication with an aircraft.
12	620 Subsection 403(5)
13	After "platform" (first occurring), insert "to which this section applies".
14	621 After subsection 403(5)
15	Insert:
16	(5A) A person commits an offence if:
17	(a) a requirement is made of the person under this section; and
18	(b) the person fails to comply with the requirement.
19	Penalty:
20	(a) if the requirement is made under subsection (2A)—
21	imprisonment for 6 months or 30 penalty units, or both; or
22	(b) if the requirement is made under subsection (3), (4) or (5)—
23	50 penalty units.
24	(5B) If there is a restraint on the liberty of a person on a vessel resulting
25	from an authorised officer's exercise of a power under this section
26	in relation to the vessel:
27	(a) the restraint is not unlawful; and
28	(b) civil or criminal proceedings in respect of the restraint may
29	not be instituted or continued in any court against:
30	(i) the authorised officer; or
31	(ii) any person assisting the authorised officer in the
32	exercise of the power; or
33	(iii) the Commonwealth.
34	This subsection is not intended to affect the jurisdiction of the High
35	Court under section 75 of the Constitution.

1 2	622	Subsection 403(6) (definition of Australian platform) Repeal the definition.
3 4 5	623	Subsection 404(1) Omit "(other than a member of a police force, or an officer of Customs, who is in uniform)", substitute "(subject to subsection (1A)".
6 7	624	Subsection 404(1) Omit "to which section 403 applies", substitute "under section 403".
8 9	625	After subsection 404(1) Insert:
0 1 2 3		(1A) Subsection (1) does not apply to an authorised officer if:(a) the authorised officer is a member of a police force or an officer of Customs; and(b) the officer is in uniform.
4	626	Subsection 404(3)
5 6		Omit "(other than a member of a police force, or an officer of Customs, who is in uniform)", substitute "(subject to subsection (3A))".
7	627	After subsection 404(3)
8		Insert:
9 0 1 2		(3A) Subsection (3) does not apply to an authorised officer if:(a) the authorised officer is a member of a police force or an officer of Customs; and(b) the officer is in uniform.
3	628	Subsection 404(4)
4		Repeal the subsection.
5	629	Subsection 405(1)
6		Omit "(except subsection 406(4))".
.7	630	Subsection 405(2)
28		Omit "(except subsection 406(4))".

1	631	At the end of section 405
2		Add:
3		(4) An authorised officer is not entitled to:
4		(a) enter premises under subsection (1); or
5		(b) exercise any powers as mentioned in subsection (2);
6		if the occupier of the premises has required the officer to produce
7		written identification for inspection by the occupier and:
8		(c) if the authorised officer is a member of a police force—the
9		officer fails to produce, for inspection by the occupier,
10		written evidence of the fact that he or she is a member of that police force; or
2		(d) if the authorised officer is an officer of Customs—the officer
13		fails to produce, for inspection by the occupier, written
4		evidence of the fact that he or she is an officer of Customs; or
15		(e) in any other case—the officer fails to produce his or her
6		identity card for inspection by the occupier.
17	632	Paragraph 406(1)(b)
8		Omit "evidential material", substitute "evidential material in relation to
9		an offence against this Act or the regulations, in relation to a
20		contravention of a civil penalty provision or in relation to both".
21	633	After paragraph 406(1)(b)
22		Insert:
23		(ba) in the case of an authorised officer who boards a vessel under
24		section 403—subject to section 406A, search without
25		warrant:
26		(i) a person on the vessel; and
27		(ii) the person's clothing;
28		to find out whether there is hidden on the person or in the
29		clothing:
30		(iii) an eligible seizable item; or
31		(iv) a thing that may be evidential material in relation to an
32		offence against this Act or the regulations, in relation to
33		a contravention of a civil penalty provision or in relation to both; and
34		to both; and
35	634	Paragraph 406(1)(c)

1 2 3		Omit "evidential material", substitute "evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both".
4	635	Paragraph 406(1)(d)
5		Omit "this Act", substitute "section 444A or 445".
6	636	Paragraph 406(1)(e)
7 8		Omit "paragraph (a), (aa), (b), (c), (ca) or (d)", substitute "any of the other paragraphs of this subsection".
9	637	Subsection 406(2)
10		Repeal the subsection, substitute:
11		(2) For the purposes of this Part, evidential material means:
12		(a) in relation to an offence against the Act or the regulations:
13		(i) any thing with respect to which the offence has been
14		committed or is suspected, on reasonable grounds, of
15		having been committed; or
16		(ii) any thing as to which there are reasonable grounds for
17 18		suspecting that it will afford evidence as to the commission of the offence; or
19		(iii) any thing as to which there are reasonable grounds for
20		suspecting that it is intended to be used for the purpose
21		of committing the offence; and
22		(b) in relation to a contravention of a civil penalty provision:
23		(i) any thing with respect to which the civil penalty
24		provision has been contravened or is suspected, on
25		reasonable grounds, of having been contravened; or
26		(ii) any thing as to which there are reasonable grounds for
27 28		suspecting that it will afford evidence as to the contravention of the civil penalty provision; or
29 29		(iii) any thing as to which there are reasonable grounds for
30		suspecting that it is intended to be used for the purpose
31		of contravening the civil penalty provision.
32 33		(2A) A reference to a thing in subsection (2) includes a reference to any such thing in electronic form.
34	638	Subsections 406(4), (5) and (6)

1	Repeal the subsections.
2	639 At the end of Division 2 of Part 17
3	Add:
4	406A Searches under paragraph 406(1)(ba)
5 6 7	(1) A search under paragraph 406(1)(ba) of a person (the <i>subject</i>) may only be conducted by an authorised officer of the same sex as the subject.
8 9 10 11 12	(2) However, if an authorised officer of the same sex as the subject is not available to conduct the search, it may be conducted by another person who:(a) is of the same sex as the subject; and(b) agrees, at the request of an authorised officer, to conduct the search.
14 15 16 17 18	 (3) Paragraph 406(1)(ba) and this section do not authorise the authorised officer or other person: (a) to remove any of the subject's clothing; or (b) to require the subject to remove any of his or her clothing; or (c) to use more force, or subject the subject to greater indignity, than is reasonably necessary to conduct the search.
22 22 23 24 25	 (4) If, in conducting a search, an authorised officer finds an eligible seizable item, or a thing that may be evidential material as mentioned in subparagraph 406(1)(ba)(iv), an authorised officer may: (a) take possession of the item or thing; and (b) keep the item or thing for such time as he or she thinks necessary for the purposes of this Act.
27 28 29 30 31 32	 (5) If, in conducting a search, the other person finds an item or thing mentioned in subsection (4): (a) he or she must take possession of it and give it to an authorised officer; and (b) an authorised officer may keep it for such time as he or she thinks necessary for the purposes of this Act. (6) If:
, ,	(0) 11.

1	(a) under subsection (4) or (5) an authorised officer is keeping an
2	item or thing found in a search of the subject; and
3	(b) the subject is detained under Schedule 1;
4	the authorised officer may continue to keep the item or thing for
5 6	such time as he or she thinks necessary for the purposes of this Act or the <i>Migration Act 1958</i> .
7 8	Note: Once the subject ceases to be detained under Schedule 1, the subject will generally need to be detained under the <i>Migration Act 1958</i> while
9	he or she is in the migration zone (because his or her enforcement visa
10 11	under that Act will cease to have effect). Subsection (6) ensures the officer can keep the item or thing while the subject is detained under
12	this Act or that Act.
13	406B Thing taken into possession is not a thing seized
14	A reference in this Act to a thing (however described) seized under
15	this Part or this Act does not include a reference to a thing that has
16	been taken into possession under section 406A or Schedule 1.
17	640 Section 407
18	Before "For the purposes", insert "(1)".
19	641 After paragraph 407(ca)
	,
20	Insert:
21 22	(cb) the power to mark a live specimen on the premises (see subsection (2));
23	642 After paragraph 407(d)
24	Insert:
25	(da) the powers to operate electronic equipment, and do other
26	things, at the premises as mentioned in section 407A;
27	643 Paragraph 407(e)
28	Omit "paragraph (a), (b), (c), (ca) or (d)", substitute "any other
29	paragraph of this subsection".
30	644 At the end of section 407
31	Add:
32	(2) For the purposes of paragraph (1)(cb), <i>mark</i> includes:
33	(a) in the case of a live plant:

1 2	(i) mark or label a cage or container in which the plant is kept or in which the plant is growing; and
3	(ii) place a label or tag on the plant; and
4	(b) in the case of a live animal:
	(i) implant a scannable device in the animal; and
5	
6	(ii) place a band on any part of the animal; and
7 8	(iii) place (whether by piercing or otherwise) a tag or ring on any part of the animal; and
9	(iv) mark or label a cage or container within which the
10	animal is kept.
11	(3) If:
12	(a) damage is caused to a specimen, or a cage or container in
13	which a specimen is kept, as a result of an authorised officer
14	exercising the power to mark under paragraph (1)(cb); and
15	(b) the damage was caused as a result of insufficient care being
16	exercised by the authorised officer;
17	compensation for the damage is payable to the owner of the
18	specimen, or to the owner of the cage or container, as the case
19	requires.
20	(4) Compensation is payable out of money appropriated by the
21	Parliament for the purpose.
22	(5) In determining the amount of compensation payable, regard is to
23	be had to whether the owner, if the owner was available at the
24	time, had provided any warning or guidance relating to the
25	marking of the specimen, cage or container.
26	645 After section 407
27	Insert:
28	407A Operation of electronic equipment at premises
29	Monitoring powers include the powers set out in this section
20	(1) Monitoring powers in relation to premises include the powers set
30 31	(1) Monitoring powers in relation to premises include the powers set out in this section. This section does not authorise these powers to
32	be exercised otherwise than in situations in which this Division
33	allows monitoring powers to be exercised.

1	Operation of equipment
2	(2) An authorised officer may operate electronic equipment at
3	premises to see whether relevant material is accessible by doing so,
4	if he or she believes on reasonable grounds that the operation of the
5	equipment can be carried out without damage to the equipment.
6	Seizure etc.
7	(3) If an authorised officer operates electronic equipment at premises
8	under subsection (2), and the authorised officer finds that relevant
9	material is accessible by doing so, he or she may:
10	(a) seize the equipment and any disk, tape or other associated
11	device; or
12	(b) if the relevant material can, by using facilities at the
13	premises, be put in documentary form—operate the facilities
14	to put the material in that form and seize the documents so
15	produced; or
16	(c) if the relevant material can be transferred to a disk, tape or
17	other storage device that:
18	(i) is brought to the premises; or
19	(ii) is at the premises and the use of which for the purpose
20	has been agreed to in writing by the occupier of the
21	premises;
22	operate the equipment or other facilities to copy the material
23	to the storage device and take the storage device from the
24	premises.
25	Limitation on seizure
26	(4) An authorised officer may seize equipment under paragraph (3)(a)
27	only if:
28	(a) it is not practicable to put the relevant material in
29	documentary form as mentioned in paragraph (3)(b) or to
30	copy the material as mentioned in paragraph (3)(c); or
31	(b) possession of the equipment by the occupier could constitute
32.	an offence

1	How this Part applies to things seized
2	(5) The other provisions of this Part apply in relation to a thing seized
3	under paragraph (3)(a) or (b) as if the thing had been seized under section 445.
5	Securing equipment
6	(6) If an authorised officer believes on reasonable grounds that:
7 8	(a) relevant material may be accessible by operating electronic equipment at the premises; and
9	(b) expert assistance is required to operate the equipment; and
10	(c) if he or she does not take action under this subsection, the
11	material may be destroyed, altered or otherwise interfered
12	with;
13	he or she may do whatever is necessary to secure the equipment,
14	whether by locking it up, placing a guard or otherwise.
15	Notice about securing equipment
16	(7) An authorised officer who wishes to secure electronic equipment
17	under subsection (6) must give notice to the occupier of the
18	premises of:
19	(a) his or her intention to secure the equipment; and
20	(b) the fact that the equipment may be secured for up to 24
21	hours.
22	Period for which equipment may be secured
23	(8) Electronic equipment may be secured under subsection (6):
24	(a) for a period not exceeding 24 hours; or
25	(b) until the equipment has been operated by the expert;
26	whichever happens first.
27	Extension of period
28	(9) If an authorised officer believes on reasonable grounds that expert
29	assistance will not be available within 24 hours, the authorised
30	officer may apply to a magistrate for an extension of that period.

1			Notice to occupier
2 3 4 5		(10)	An authorised officer must give notice to the occupier of the premises of his or her intention to apply for an extension under subsection (9), and the occupier is entitled to be heard in relation to the application.
6			Provisions relating to extensions
		,,,,	
7		(11)	The provisions of this Division relating to the issue of a monitoring
8 9			warrant apply, with such modifications as are necessary, to the issuing of an extension.
10			Definition
11		(12)	In this section:
12			relevant material means:
13			(a) evidential material; or
14			(b) any other material that is relevant for the purposes of finding
15			out whether any or all of the provisions of this Act or the
16			regulations have been, are being or will be complied with.
17	407B	Con	pensation for damage to electronic equipment
17 18	407B	Con (1)	
	407B		If:
18	407B		
18 19	407B		If: (a) damage is caused to electronic equipment as a result of it
18 19 20	407B		 If: (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and (b) the damage was caused as a result of: (i) insufficient care being exercised in selecting the person
18 19 20 21 22 23	407B		If: (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and (b) the damage was caused as a result of: (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
18 19 20 21 22	407B		 If: (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and (b) the damage was caused as a result of: (i) insufficient care being exercised in selecting the person
18 19 20 21 22 23 24	407B		If: (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and (b) the damage was caused as a result of: (i) insufficient care being exercised in selecting the person who was to operate the equipment; or (ii) insufficient care being exercised by the person operating the equipment;
18 19 20 21 22 23 24 25	407B		If: (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and (b) the damage was caused as a result of: (i) insufficient care being exercised in selecting the person who was to operate the equipment; or (ii) insufficient care being exercised by the person operating
18 19 20 21 22 23 24 25 26	407B	(1)	If: (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and (b) the damage was caused as a result of: (i) insufficient care being exercised in selecting the person who was to operate the equipment; or (ii) insufficient care being exercised by the person operating the equipment; compensation for the damage is payable to the owner of the equipment. Compensation is payable out of money appropriated by the
18 19 20 21 22 23 24 25 26 27	407B	(1)	If: (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and (b) the damage was caused as a result of: (i) insufficient care being exercised in selecting the person who was to operate the equipment; or (ii) insufficient care being exercised by the person operating the equipment; compensation for the damage is payable to the owner of the equipment.
18 19 20 21 22 23 24 25 26 27 28	407B	(1)	If: (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and (b) the damage was caused as a result of: (i) insufficient care being exercised in selecting the person who was to operate the equipment; or (ii) insufficient care being exercised by the person operating the equipment; compensation for the damage is payable to the owner of the equipment. Compensation is payable out of money appropriated by the
18 19 20 21 22 23 24 25 26 27 28 29	407B	(1)	If: (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and (b) the damage was caused as a result of: (i) insufficient care being exercised in selecting the person who was to operate the equipment; or (ii) insufficient care being exercised by the person operating the equipment; compensation for the damage is payable to the owner of the equipment. Compensation is payable out of money appropriated by the Parliament for the purpose.

1 2		provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.
3	646	Subsections 408(1) and (2)
4		Omit "are being", substitute "have been, are being or will be".
5	647	At the end of subsection 409(1)
6		Add:
7 8		Note: Urgent applications may be made by telephone or other electronic means under section 409A.
9	648	Subsection 409(2)
10		Omit "are being", substitute "have been, are being or will be".
11	649	Subsection 409(3)
12		Omit "authorised person", substitute "authorised officer".
13	650	Paragraph 409(4)(a)
14		Repeal the paragraph, substitute:
15		(a) name an authorised officer who, unless he or she inserts the
16		name of another authorised officer in the warrant, is to be
17		responsible for executing the warrant; and (aa) authorise the executing officer, with such assistance and by
18 19 20		such force as is necessary and reasonable, from time to time while the monitoring warrant remains in force:
21		(i) to enter the premises; and
22 23		(ii) to exercise monitoring powers in relation to the premises; and
24	651	After section 409
25		Insert:
26	409 A	Monitoring warrants by telephone or other electronic means
27		Application
28		(1) An authorised officer may make an application to a magistrate for
29		a monitoring warrant by telephone, telex, fax or other electronic
30		means:
31		(a) in an urgent case; or

1 2 3	(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the monitoring warrant.
4	Voice communication
5	(2) The magistrate:
6 7	(a) may require communication by voice to the extent that is practicable in the circumstances; and
8	(b) may make a recording of the whole or any part of any such communication by voice.
10	Information
11 12 13 14	(3) An application under this section must include all information as required to be provided in an application under section 409, but the application may, if necessary, be made before the information is sworn or affirmed.
15	Issue of monitoring warrant
16 17 18 19 20	(4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:(a) a monitoring warrant in the terms of the application should
21 22 23 24	be issued urgently; or (b) the delay that would occur if an application were made in person would frustrate the effective execution of the monitoring warrant;
25 26	the magistrate may complete and sign the same form of monitoring warrant that would be issued under section 409.
27	Notification
28 29 30 31	(5) If the magistrate decides to issue the monitoring warrant, the magistrate must inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the monitoring warrant and the day on which and the time at which it was signed.

1	Form of monitoring warrant
2 3	(6) The applicant must then complete a form of monitoring warrant in terms substantially corresponding to those given by the magistrate,
4 5	stating on the form the name of the magistrate and the day on which and the time at which the monitoring warrant was signed.
6	Completed form of monitoring warrant to be given to magistrate
7 8	(7) The applicant must, not later than 48 hours after making the application, give or transmit to the magistrate:
9	(a) the form of monitoring warrant completed by the applicant; and
11 12	(b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.
13	Attachment of form of warrant to subsection (7) documents
14	(8) The magistrate must attach to the documents provided under
15 16	subsection (7) the form of monitoring warrant completed by the magistrate.
17	Presumption if form of warrant not produced in evidence
18	(9) If:
19	(a) it is material, in any proceeding, for a court to be satisfied
20 21	that the exercise of a power under a monitoring warrant issued under this section was duly authorised; and
22 23	(b) the form of monitoring warrant signed by the magistrate is not produced in evidence;
24	the court is to assume, unless the contrary is proved, that the
25	exercise of the power was not duly authorised.
26	Court may admit evidence even if subsection (7) or (8) not
27	complied with
28	(10) A court may admit evidence obtained because of the issue of a
29	warrant pursuant to this section even if either or both of
30 31	subsections (7) and (8) have not been complied with if, having regard to the nature of and reasons for the non-compliance and any
32	other relevant matters, the court is satisfied that it was not
33	practicable to comply with that subsection or those subsections (as
34	the case requires).

1	409I	3 Executing officer to be in possession of warrant
2 3		When executing a warrant, the executing officer must be in possession of:
4 5		(a) the original warrant issued by the magistrate under section 409, or a copy of the original warrant as so issued; or
6 7		(b) the original form of warrant completed under subsection 409A(6), or a copy of the original form as so completed.
8	652	Subsection 410(1)
9 10		Omit "authorised officer named in the monitoring warrant", substitute "executing officer".
11	653	Subsection 410(2)
12 13		Omit "authorised officer named in the monitoring warrant", substitute "executing officer".
14	654	Subsection 412(1)
15 16 17		Omit "The authorised officer named in a monitoring warrant must, before any person enters premises under the monitoring warrant", substitute "Before any person enters premises under a monitoring
18		warrant, the executing officer must".
19	655	Subsection 412(2)
20		Omit "An authorised officer", substitute "The executing officer".
21	656	Subsection 412A(1)
22 23 24		Omit "If the authorised officer named in a monitoring warrant enters premises under the warrant", substitute "If the executing officer enters premises under a monitoring warrant".
25	657	Paragraphs 412A(1)(a), (b) and (c)
26	00.	Omit "authorised officer" (wherever occurring), substitute "executing
27		officer".
28	658	Paragraph 412A(2)(a)
29		Repeal the paragraph, substitute:
30 31		(a) the executing officer has entered premises under a monitoring warrant; and

1	659	Paragraph 412A(2)(c)
2 3		Omit "authorised officer" (wherever occurring), substitute "executing officer".
4	660	Subsection 413(1)
5 6		Omit "by information on oath", substitute ", by information on oath or affirmation,".
7	661	Subsection 413(1)
8 9 10 11		Omit "any evidential material at the premises", substitute "at the premises evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both".
12	662	Subsection 413(2)
13 14		Omit "by information on oath", substitute ", by information on oath or affirmation,".
15	663	Subsection 413(2)
16 17 18		Omit "evidential material", substitute "evidential material in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both".
19	664	Paragraph 414(1)(a)
20 21		Omit "the offence", substitute "each offence and/or civil penalty provision".
22	665	Paragraph 414(1)(d)
23		Repeal the paragraph, substitute:
24		(d) the name of the authorised officer who, unless he or she
25 26		inserts the name of another authorised officer in the warrant, is to be responsible for executing the warrant; and
27	666	Paragraph 414(1)(f)
28		Repeal the paragraph, substitute:
29		(f) if the warrant relates to premises—whether the premises may
30		be entered at any time of the day or night or only during
31		particular hours of the day or night; and

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	(g) if the warrant relates to a person—whether the search of the person may be carried out at any time of the day or night or only during particular hours of the day or night.
667	Subparagraph 414(2)(a)(i)
	Omit "in relation to an offence", substitute "in relation to an offence, or in relation to a contravention of a civil penalty provision,".
668	After subparagraph 414(2)(a)(ii)
	Insert:
	or (iii) evidential material in relation to another contravention of a civil penalty provision;
669	Paragraph 414(2)(a)
	After "regulations", insert "or in contravening a civil penalty provision".
670	Paragraph 414(2)(b)
	Omit all the words after "the person has", substitute:
	in his or her possession:
	(i) any evidential material in relation to an offence against
	this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both; or
	(ii) any eligible seizable items.
671	Subparagraph 414(4)(a)(i)
	Omit "in relation to an offence", substitute "in relation to an offence, or
	in relation to a contravention of a civil penalty provision,".
672	After subparagraph 414(4)(a)(ii)
	Insert:
	or (iii) evidential material in relation to another contravention
	of a civil penalty provision;
673	Paragraph 414(4)(a)
	After "regulations", insert "or in contravening a civil penalty
	provision".
674	Subsection 416(1)
	669 670 671 672

1		Omit "authorised person", substitute "authorised officer".
2	675	At the end of subsection 416(3) Add "or affirmed".
	070	Dana manda 44.0(7)/h)
4	6/6	Paragraph 416(7)(b)
5 6		Omit all the words after "was not", substitute "sworn or affirmed—that information duly sworn or affirmed.".
7	677	Subparagraph 417(1)(d)(i)
8 9		Omit "in relation to an offence", substitute "in relation to an offence, or in relation to a contravention of a civil penalty provision,".
10	678	After subparagraph 417(1)(d)(ii)
11		Insert:
12		or (iii) evidential material in relation to another contravention
13		of a civil penalty provision;
14	679	Paragraph 417(1)(d)
15 16		After "regulations", insert "or in contravening a civil penalty provision".
17	680	Paragraph 417(1)(f)
18		Omit all the words after "the person has", substitute:
19		in his or her possession:
20		(i) any evidential material in relation to an offence against
21		this Act or the regulations, in relation to a contravention
22		of a civil penalty provision or in relation to both; or
23		(ii) any eligible seizable items.
24	681	Subparagraph 417(2)(c)(i)
25		Omit "in relation to an offence", substitute "in relation to an offence, or
26		in relation to a contravention of a civil penalty provision,".
27	682	After subparagraph 417(2)(c)(ii)
28		Insert:
29		or (iii) evidential material in relation to another contravention
30		of a civil penalty provision;

1	683	Paragraph 417(2)(c)
2		After "regulations", insert "or in contravening a civil penalty
3		provision".
4	684	Subsection 417(3)
5		Repeal the subsection, substitute:
6		Hours when premises may be searched
7 8 9		(3) If a warrant in relation to premises states that the premises may be entered only during particular hours, the premises must not be entered outside those hours.
10		Hours when person may be searched
11 12 13		(3A) If a warrant in relation to a person states that the search of the person may be carried out only during particular hours, the search must not be carried out outside those hours.
14	685	Subsection 417(4)
15		Omit "the warrant", substitute "a warrant".
16	686	After section 418
17		Insert:
18	418	A Executing officer to be in possession of warrant
19		When executing a warrant, the executing officer must be in
20		possession of:
21		(a) the original warrant issued by the magistrate under
22		section 415, or a copy of the original warrant as so issued; or
23 24		(b) the original form of warrant completed under subsection 416(6), or a copy of the original form as so completed.
25	687	Subsection 422(1)
26		After "evidential material", insert "in relation to an offence against this
27		Act or the regulations, in relation to a contravention of a civil penalty
28		provision or in relation to both,".
29	688	Subsection 422(2)

1 2 3		After "evidential material", insert "in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both,".
4	689	Paragraph 422(4)(a)
5 6 7		After "evidential material", insert "in relation to an offence against this Act or the regulations, in relation to a contravention of a civil penalty provision or in relation to both,".
8	690	Division 5 of Part 17
9		Repeal the Division.
10 11 12	691	Subsection 430(2) Omit "(other than a member of a police force, or an officer of Customs who is in uniform)", substitute "(subject to subsection (2A)".
13 14	692	After subsection 430(2) Insert:
15 16 17 18		(2A) Subsection (2) does not apply to an authorised officer if:(a) the authorised officer is a member of a police force or an officer of Customs; and(b) the officer is in uniform.
19	693	After paragraph 432(a)
20		Insert:
21 22		(aa) evidential material in relation to a contravention of a civil penalty provision; or
23	694	After paragraph 433(a)
24		Insert:
25 26		(aa) evidential material in relation to a contravention of a civil penalty provision; or
27	695	At the end of Division 6 of Part 17
28		Add:

1	433A Interaction of this Division with Schedule 1
2 3	This Division does not limit, and is not limited by, Schedule 1. In particular, the detention of a person under Schedule 1 is not to be taken to constitute the arrest of the person for the purposes of this
5	taken to constitute the arrest of the person for the purposes of this Division.
6	696 After Division 6 of Part 17
7	Insert:
8 9	Division 6A—Provisions relating to detention of suspected foreign offenders
10	433B Provisions relating to detention of suspected foreign offenders
11	Schedule 1 has effect.
12 13	697 Paragraph 437(a) Omit "section 416", substitute "section 409A or 416".
	698 Paragraph 437(b)
14 15	Omit "that section", substitute "section 409A or 416".
16	699 Paragraph 437(c)
17	Omit "that section" (first occurring), substitute "section 409A or 416".
18	700 Paragraph 437(d)
19	Omit "that section", substitute "section 409A or 416".
20	701 Section 438
21	Repeal the section, substitute:
22	438 Retention of things seized under Division 4 or 6
23	(1) This section applies to a thing that is seized under Division 4 or 6.
24	(2) The thing may be retained until:
25	(a) the reason for the seizure of the thing no longer exists; or
26 27	(b) it is decided that the thing is not to be used in evidence; whichever happens first.

1 2 3		(3) As soon as practicable after the end of the period during which the thing may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the thing to the person
4 5		from whom it was seized (or to the owner if that person is not entitled to possess it).
6		(4) Subsection (3) does not apply if:
7		(a) the thing is forfeited or forfeitable to the Commonwealth; or
8		(b) the thing has been dealt with under this Part, or as otherwise
9		authorised (by a law, or an order of a court, of the
10		Commonwealth or of a State or Territory), in a way that
11 12		means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or
13		(c) the Commonwealth, the Secretary or an authorised officer is
14		otherwise authorised (by a law, or an order of a court, of the
15		Commonwealth or of a State or Territory) to retain, destroy,
16		dispose of or otherwise deal with the thing.
17	702	Section 439
18		Repeal the section.
19	703	Paragraph 442(3)(b)
20		Omit "section 429", substitute "section 403".
21	704	Subsection 442(5)
22 23		Omit "(other than a member of a police force, or an officer of Customs, who is in uniform)", substitute "(subject to subsection (6))".
24	705	At the end of section 442
25		Add:
26		(6) Subsection (5) does not apply to an authorised officer if:
27		(a) the authorised officer is a member of a police force or an
28		officer of Customs; and
29		(b) the officer is in uniform.
30	706	After subsection 443A(2)
31		Insert:
32		(2A) The authorised officer may ask the questions:

1		(a) in any case—by asking them in the presence of the person; or
2		(b) if the authorised officer is not a member of a police force and
3		is not an officer of Customs—by sending written questions to
4		the person.
5	707	Paragraph 443A(7)(c)
6		Repeal the paragraph, substitute:
7		(c) if the authorised officer is not a member of a police force and
8		is not an officer of Customs:
9		(i) if the questions are asked in the presence of the
0		person—the authorised officer produces the authorised
1		officer's identity card for inspection by the person; or
12		(ii) if the questions are asked by sending written questions
13		to the person—the authorised officer sends with the
14 15		questions a copy of his or her instrument of appointment.
IJ		арропинени.
_	708	Section 444A
6		
		Before "An", insert "(1)".
17	709	
17	709	At the end of section 444A
17	709	
17	709	At the end of section 444A
17	709	At the end of section 444A Add:
17 18 19 20	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4:
17 8 8 9 20 21	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4: (a) if the warrant relates to premises—this section does not
17 18 19 20 21 22	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4: (a) if the warrant relates to premises—this section does not apply:
7 8 9 20 21 22 23 24	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4: (a) if the warrant relates to premises—this section does not apply: (i) to the executing officer, or an officer assisting, while he
17 18 19 20 21 22 23	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4: (a) if the warrant relates to premises—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or (ii) to anything found during the course of such a search; and
17 18 19 20 21 22 23 24 25	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4: (a) if the warrant relates to premises—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or (ii) to anything found during the course of such a search; and (b) if the warrant relates to a person—this section does not
17 18 19 20 21 22 23 24 25 26	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4: (a) if the warrant relates to premises—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or (ii) to anything found during the course of such a search; and (b) if the warrant relates to a person—this section does not apply:
17 18 19 20 21 22 23 24 25 26 27 28	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4: (a) if the warrant relates to premises—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or (ii) to anything found during the course of such a search; and (b) if the warrant relates to a person—this section does not apply: (i) to the executing officer, or an officer assisting, while he
27 28 20 21 22 23 24 25 26 27 28 29	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4: (a) if the warrant relates to premises—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or (ii) to anything found during the course of such a search; and (b) if the warrant relates to a person—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or
27 28 29 20 21 22 23 24 25 26 27 28 29 30 31	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4: (a) if the warrant relates to premises—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or (ii) to anything found during the course of such a search; and (b) if the warrant relates to a person—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or vessel, under the warrant; or
27 28 29 20 21 22 23 24 25 26 27 28 29 30 31	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4: (a) if the warrant relates to premises—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or (ii) to anything found during the course of such a search; and (b) if the warrant relates to a person—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or vessel, under the warrant; or (ii) to anything found during the course of such a search.
27 28 29 20 21 22 23 24 25 26 27 28 29 30 31	709	At the end of section 444A Add: (2) If a warrant has been issued under Division 4: (a) if the warrant relates to premises—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or (ii) to anything found during the course of such a search; and (b) if the warrant relates to a person—this section does not apply: (i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or vessel, under the warrant; or

1 2	710	Section 444F Repeal the section.
3	711	Paragraph 444G(1)(e) Repeal the paragraph.
5	712	Subsection 444G(2) (second sentence) Repeal the sentence.
7	713	At the end of section 444G Add:
9 10 11 12 13		(3) As soon as practicable after the end of the period during which the specimen may be retained under subsection (1), the Secretary must cause reasonable steps to be taken to return the specimen to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
14 15 16 17 18 19 20 21 22 23 24		 (4) Subsection (3) does not apply if: (a) the specimen is forfeited or forfeitable to the Commonwealth; or (b) the specimen has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the specimen; or (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy,
25 26 27		dispose of or otherwise deal with the specimen; or (d) proceedings under subsection 444D(1) relating to the specimen are pending.
28	714	Subparagraph 444H(1)(b)(ii)
29 30 31 32 33		Repeal the subparagraph, substitute: (ii) the specimen is released unconditionally to a person under section 449BA; (iia) the specimen is delivered to a person under section 444C;

1 2	715	Subparagraph 444H(1)(b)(iv) Omit "section 444K", substitute "section 450A".
3	716	Section 444J
4		Repeal the section.
5	717	Section 444K
6		Repeal the section.
7 8	718	Subdivision A of Division 10 of Part 17 (heading) Repeal the heading, substitute:
9	Sub	division A—Seizure of things (other than specimens involved in a contravention of Part 13A)
1	719	Section 445
12		Repeal the section, substitute:
13	445	Seizure of things (other than specimens involved in a contravention of Part 13A)
15 16 17 18		(1) Subject to subsections (2) and (3), an authorised officer may seize a thing if he or she has reasonable grounds to suspect that it is evidential material in relation to an offence against this Act or the regulations, in relation to contravention of a civil penalty provision or in relation to both.
20 21 22		(2) This section does not apply to a specimen that an authorised officer has reasonable grounds to suspect has been used or otherwise involved in the commission of an offence against Part 13A.
23		Note: Section 444A deals with the seizure of such specimens.
24		(3) If a warrant has been issued under Division 4:
25		(a) if the warrant relates to premises—this section does not
26		apply:
27 28		(i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or
29		(ii) to anything found during the course of such a search;
80		and

1 2	(b) if the warrant relates to a person—this section does not apply:
3	(i) to the executing officer, or an officer assisting, while he
4	or she is searching a person, or an aircraft, vehicle or
5	vessel, under the warrant; or
6	(ii) to anything found during the course of such a search.
7 8 9	Note: Division 4 is about search warrants. The Division contains its own seizure powers (see paragraphs 417(1)(c), (d) and (e) and (2)(b), (c) and (d)).
10	(4) In this section:
11 12	<i>thing</i> includes a vehicle, vessel, aircraft, platform, document, organism and specimen.
13	720 Subsections 446(1), (2) and (3)
14	Repeal the subsections, substitute:
15	(1) This section applies to a thing that is seized under section 445.
16	(1A) The thing may be retained until:
17	(a) the reason for the seizure no longer exists; or
18	(b) it is decided that the thing is not to be used in evidence; or
19	(c) the end of the period of 60 days after the seizure, or, if that
20	period has been extended under subsection (3), the end of the
21	extended period;
22	whichever happens first.
23	(1B) As soon as practicable after the end of the period (the <i>retention</i>
24	<i>period</i>) during which the thing may be retained under
25	subsection (1A), the Secretary must cause reasonable steps to be
26 27	taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
21	
28	(1C) Subsection (1B) does not apply if:
29	(a) the thing is forfeited or forfeitable to the Commonwealth; or
30	(b) a proceeding in respect of which the thing may afford
31	evidence was commenced before the end of the retention
32 33	period and has not been completed (including an appeal to a court in relation to that proceeding); or
34	(c) the thing has been dealt with under this Part, or as otherwise
35	authorised (by a law, or an order of a court, of the

1 2		Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable
3		steps to be taken to return the thing; or
4		(d) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the
5 6		Commonwealth or of a State or Territory) to retain, destroy,
7		dispose of or otherwise deal with the thing.
8		(2) An authorised officer may, before the end of the retention period,
9		apply to a magistrate for an order permitting the retention of the
10		thing for a further period.
11 12		(3) If, in relation to an application under subsection (2), the magistrate is satisfied, by information on oath or affirmation, that it is
13		necessary for the thing to continue to be retained:
14		(a) for the purposes of an investigation as to whether an offence
15		against this Act or the regulations has been committed, or
16		whether a civil penalty provision has been contravened; or
17		(b) to enable evidence of an offence against this Act or the
18		regulations, or of a contravention of a civil penalty provision
19		to be secured for the purposes of a proceeding against the
20		person for such an offence or contravention;
21		the magistrate may order that the thing may continue to be retained
22		for a period specified in the order. The maximum period of an
23		individual extension must not be more than 30 days.
24		(3A) Before an authorised officer makes an application under
25		subsection (2), he or she must:
26		(a) take reasonable steps to discover who has an interest in the
27		retention of the thing; and
28		(b) if it is practicable to do so, give notice in writing of the
29		proposed application to each person whom the authorised
30		officer believes to have an interest in the proposed
31		application.
32 33	Note:	The heading to section 446 is replaced by the heading " Retention of things seized under this Subdivision ".
34	721	Subsection 446(4)
35		Omit "particular goods", substitute "the thing".
26	722	Section 447

1		Repeal the section.
2	723	Section 448
3		Repeal the section.
4	724	Subdivision B of Division 10 of Part 17 (heading)
5		Repeal the heading, substitute:
6	Sub	division B—Disposal of seized items
7	725	Paragraph 449(1)(a)
8		Omit "this Division", substitute "this Part".
9	726	Paragraph 449(1)(b)
10		Omit "it is", substitute "the Secretary considers that it is".
11	727	Subparagraph 449(1)(b)(v)
12		After "organism" (wherever occurring), insert "or specimen".
13	728	At the end of paragraph 449(1)(b)
14		Add:
15 16		or (vi) in the case of a live animal—result in the animal suffering;
17	729	After subsection 449(1)
18		Insert:
19		(1A) If the Secretary causes a live animal to be destroyed under
20 21		subsection (1), the Secretary must require the destruction to be carried out in a humane manner.
22	730	Paragraph 449(2)(d)
23		Omit "this Division", substitute "this Part".
24	731	At the end of Subdivision B of Division 10 of Part 17
25		Add:

449A DIS	sposal of seized items if Secretary cannot locate or identify person entitled etc.
(1) This section applies to a thing that is seized under this Part if:
	(a) apart from this section, the thing is required to be returned or
	delivered to a person (or reasonable steps are required to be
	taken for the return or delivery to a person of the thing); and
	(b) one or more of the following applies:
	(i) the Secretary is satisfied that reasonable steps have been
	taken to locate or identify the person, but those steps have not succeeded;
	(ii) the Secretary is satisfied that reasonable steps have been
	taken to return or deliver the thing to the person, but
	those steps have not succeeded;
	(iii) the Secretary is otherwise satisfied that it is not
	practicable to return or deliver the thing to the person.
(2	The Secretary may dispose of the thing in such manner as the
	Secretary considers appropriate.
732 Afte	o Out distance D of Distance 40 of Doct 47
IJE AILE	er Subdivision B of Division 10 of Part 1/
	er Subdivision B of Division 10 of Part 17
Ins	ert:
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Ins Subdivis	ert:
Ins Subdivis	ion BA—Release of seized items to owner etc. elease of seized items to owner etc.
Ins Subdivis	ion BA—Release of seized items to owner etc.
Ins Subdivis	ion BA—Release of seized items to owner etc. Release of seized items to owner etc. If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized,
Ins Subdivis	ion BA—Release of seized items to owner etc. elease of seized items to owner etc. If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either:
Ins Subdivis	ion BA—Release of seized items to owner etc. Lelease of seized items to owner etc. If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either: (a) unconditionally; or
Ins Subdivis	ion BA—Release of seized items to owner etc. Release of seized items to owner etc. If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either: (a) unconditionally; or (b) on such conditions as the Secretary thinks fit (including
Ins Subdivis	ion BA—Release of seized items to owner etc. Lelease of seized items to owner etc. If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either: (a) unconditionally; or (b) on such conditions as the Secretary thinks fit (including conditions about the giving of security for giving payment of
Ins Subdivis	ion BA—Release of seized items to owner etc. Release of seized items to owner etc. If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either: (a) unconditionally; or (b) on such conditions as the Secretary thinks fit (including
Ins Subdivis 449BA R	ion BA—Release of seized items to owner etc. Lelease of seized items to owner etc. If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either: (a) unconditionally; or (b) on such conditions as the Secretary thinks fit (including conditions about the giving of security for giving payment of its value if it is forfeited).
Ins Subdivis 449BA R	ion BA—Release of seized items to owner etc. lelease of seized items to owner etc. If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either: (a) unconditionally; or (b) on such conditions as the Secretary thinks fit (including conditions about the giving of security for giving payment of its value if it is forfeited).
Ins Subdivis 449BA R	ion BA—Release of seized items to owner etc. Lelease of seized items to owner etc. If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either: (a) unconditionally; or (b) on such conditions as the Secretary thinks fit (including conditions about the giving of security for giving payment of its value if it is forfeited).

1 2 3	under section 449BA. The provision of this Part under which the seizure was made is the <i>seizure provision</i> , and the thing that is released is the <i>released thing</i> .
4 5 6	(2) Subject to this section, the provisions of this Part that apply in relation to things seized under the seizure provision continue to apply to the released thing as if it had not been released.
7 8 9 10	(3) A reference in a provision of this Part to the return or delivery of the released thing to a person is, if the person is the person to whom the thing has been released, taken to be a reference to making the release of the thing to the person unconditional.
11 12 13 14 15 16 17	 (4) The regulations may specify modifications of provisions of this Part that are to have effect in relation to things to which this section applies. However, regulations must not: (a) increase, or have the effect of increasing, the maximum penalty for any offence; or (b) widen, or have the effect of widening, the scope of any offence.
18 19	(5) In this section:<i>modifications</i> includes additions, omissions or substitutions.
20 21	733 Subdivision C of Division 10 of Part 17 (heading) Repeal the heading, substitute:
22	Subdivision C—Forfeiture of seized items
23 24 25	734 Subsection 450(2) After "seized under this Act", insert "or taken into possession under section 406A or Schedule 1".
26 27	735 At the end of section 450 Add:
28 29 30 31 32	 (3) If: (a) a specimen is seized under this Part; and (b) either: (i) a court finds a person not guilty of an offence against this Act or the regulations in relation to the specimen; or

1		(ii) a proceeding in a court for such an offence in relation to the specimen is discontinued or dismissed; and
2		
3		(c) the court is satisfied that there are reasonable grounds for
4		suspecting that, if the specimen were released to the person from whom it was saized or to its owner, the pessession of
5		from whom it was seized or to its owner, the possession of the specimen by that person would contravene a provision of
6 7		this Act or the regulations;
8		the court may order the forfeiture to the Commonwealth of the
9		specimen.
10 11	Note:	The heading to section 450 is replaced by the heading "Court-ordered forfeiture: order by court dealing with offence proceedings".
12	736	At the end of Subdivision C of Division 10 of Part 17
13		Add:
14	450A	Court-ordered forfeiture: other situations
15		(1) A court may, on the application of the Secretary, order the
16		forfeiture to the Commonwealth of a thing that is seized under this
17		Part if the court is satisfied that the thing has been used or
18		otherwise involved in the commission of an offence against this
19		Act or the regulations.
20		(2) Without limiting subsection (1), a court may, on the application of
21		the Secretary, order the forfeiture to the Commonwealth of a
22		specimen if:
23		(a) the specimen was seized under this Part; and
24		(b) either:
25		(i) a court has found a person not guilty of an offence
26		against this Act or the regulations in relation to the
27		specimen; or
28		(ii) a proceeding in a court for such an offence in relation to
29		the specimen has been discontinued or dismissed; and
30		(c) the court to which the Secretary applies is satisfied that there
31		are reasonable grounds for suspecting that, if the specimen
32		were released to the person from whom it was seized or to its
33		owner, the possession of the specimen by that person would
34		contravene a provision of this Act or the regulations.

1	450B	Forfeiture of seized items by consent etc.
2		(1) If:
3		(a) a thing is seized under this Part; and
4		(b) the owner of the thing agrees to transfer ownership of the
5		thing to the Commonwealth, either:
6		(i) unconditionally; or
7		(ii) in the event that a future contingency happens; and
8		(c) if subparagraph (b)(ii) applies—that contingency happens;
9		then:
10		(d) the thing becomes the property of the Commonwealth; and
11		(e) the provisions of this Part relating to forfeiture apply as if the
12		thing had been forfeited to the Commonwealth under this
13		Act.
14		(2) If:
15		(a) a thing is seized under this Part; and
16		(b) the owner of the thing agrees to transfer ownership of the
17		thing to the Commonwealth in the event that a future
18		contingency happens;
19		the Secretary may retain the thing:
20		(c) until the thing becomes the property of the Commonwealth;
21		Or
22 23		(d) if the thing does not become the property of the Commonwealth—until the end of the last day on which that
24		contingency could happen.
25		(3) Subsection (2) has effect despite anything in section 438, 444G,
26		446, 456AB or 456AC.
27	737	Subdivision D of Division 10 of Part 17 (heading)
28		Repeal the heading.
29	738	Subdivision E of Division 10 of Part 17 (heading)
30		Repeal the heading.
31	739	After paragraph 452(1)(c)
32		Insert:
33		and (d) the Secretary requests the person to deliver the thing to the
34		Secretary;

1	740	Subdivision F of Division 10 of Part 17 (heading)
2		Repeal the heading, substitute:
3 4	Sub	division F—Keeping of organisms or specimens that have been seized
5	741	Section 453
6		After "organism" (wherever occurring), insert "or specimen".
7	Note:	The heading to section 453 is altered by inserting "or specimens" after "organisms".
8	742	Section 453
9		After "organisms", insert "or specimens".
10	743	Subsection 454(1)
11		After "If an organism", insert "or specimen".
12	Note:	The heading to section 454 is altered by adding at the end "or specimens".
13	744	At the end of paragraphs 454(1)(a), (b) and (c)
14		Add "or specimen".
15	745	Paragraphs 454(2)(a) and (b)
16		After "organism", insert "or specimen".
17	746	At the end of subsection 454(2)
18		Add "or specimen".
19	747	Subsection 454(6)
20		After "organism", insert "or specimen".
21	748	Subdivision G of Division 10 of Part 17 (heading)
22		Repeal the heading, substitute:
23	Sub	division G—Rescuing things
24	749	Paragraph 455(a)
25		Omit "goods", substitute "thing".
26	Note:	The heading to section 455 is altered by omitting "goods" and substituting "things".

1	750	Paragraph 455(b)
2		Omit "goods have been, or are", substitute "thing has been, or is".
3	751	Subsection 456(1)
4		Omit "(1)".
5	752	Paragraph 456(1)(a)
6		Omit "any goods", substitute "any thing".
7	Note:	The heading to section 456 is altered by omitting "goods" and substituting "things".
8	753	Paragraph 456(1)(a)
9 10		Omit "goods, the securing of goods", substitute "a thing, the securing of a thing".
11	754	Paragraph 456(1)(b)
12		Omit "any goods", substitute "any thing".
13 14	755	Paragraph 456(1)(b) Omit "goods, the securing of goods", substitute "a thing, the securing of
15		a thing".
16	756	Subsection 456(2)
17		Repeal the subsection.
18	757	At the end of Division 10 of Part 17
19		Add:
20	Sub	division H—Seizure of cages or containers
21	456 A	AA Power to seize cages or containers containing seizable things
22		(1) This section applies if:
23		(a) an authorised officer has power to seize a thing (a seizable
24		<i>thing</i>) under another provision of this Part; and
25		(b) the seizable thing is in a cage or container; and
26		(c) the authorised officer considers that it is not reasonably
27		practicable to seize the seizable thing without also seizing the cage or container.
28		cage of container.

		For the purpose of seizing the seizable thing and despite any other provision of this Part, the authorised officer may seize the cage or container containing the seizable thing (whether or not the cage or container also contains any other thing).
5 6	(3)	The seizure of the seizable thing is taken to occur under the provision mentioned in paragraph (1)(a) (not under this section).
7 8 9		Note: The provisions governing the retention and return of the seizable thing are therefore the provisions that usually govern the seizure of a thing under the provision mentioned in paragraph (1)(a).
10	(4)	If:
11		(a) an authorised officer seizes a cage or container; and
12 13 14		(b) the seizure of the cage or container is authorised by this section, and is also authorised by another provision of this Part;
15		then the seizure is taken be under this section, rather than under
16		that other provision (subject to subsection 456AB(5)).
17	456AB Re	etention of seized cage or container
18 19	(1)	This section applies to a cage or container that is seized under section 456AA because it contains a seizable thing.
20 21 22	(2)	The cage or container may be retained for so long as an authorised officer considers that it is reasonably necessary to retain it for the purpose of housing the seizable thing.
23	(3)	As soon as practicable after the end of the period during which the
		cage or container may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the
24 25		cage or container to the person from whom it was seized (or to the
25		case of container to the berson from whom it was seized to to the
25 26		owner if that person is not entitled to possess it).
24 25 26 27 28	(4)	
25 26 27	(4)	owner if that person is not entitled to possess it). Subsection (3) does not apply if:
25 26 27 28	(4)	owner if that person is not entitled to possess it).
25 26 27 28 29	(4)	owner if that person is not entitled to possess it). Subsection (3) does not apply if: (a) the seizure was also authorised by another provision of this
25 26 27 28 29 30	(4)	owner if that person is not entitled to possess it). Subsection (3) does not apply if: (a) the seizure was also authorised by another provision of this Part (the <i>other seizure provision</i>), as mentioned in subsection 456AA(4)); or (b) the cage or container is forfeited or forfeitable to the
25 26 27 28 29 30 31	(4)	owner if that person is not entitled to possess it). Subsection (3) does not apply if: (a) the seizure was also authorised by another provision of this Part (the <i>other seizure provision</i>), as mentioned in subsection 456AA(4)); or (b) the cage or container is forfeited or forfeitable to the Commonwealth; or
25 26 27 28 29 30 31 32	(4)	owner if that person is not entitled to possess it). Subsection (3) does not apply if: (a) the seizure was also authorised by another provision of this Part (the <i>other seizure provision</i>), as mentioned in subsection 456AA(4)); or (b) the cage or container is forfeited or forfeitable to the Commonwealth; or (c) the cage or container has been dealt with under this Part, or
25 26 27 28 29 30 31 32 33	(4)	owner if that person is not entitled to possess it). Subsection (3) does not apply if: (a) the seizure was also authorised by another provision of this Part (the <i>other seizure provision</i>), as mentioned in subsection 456AA(4)); or (b) the cage or container is forfeited or forfeitable to the Commonwealth; or

1 2 3 4 5 6 7 8 9	steps to be taken to return the cage or container; or (d) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the cage or container. (5) If, because of paragraph (4)(a), the cage or container does not have to be returned at the end of the period referred to in subsection (3), this Part then applies in relation to the cage or container as if, at the end of that period, it had been seized under the other seizure provision.
12 13	456AC Retention of non-seizable things contained in seized cages or containers
14	(1) This section applies if:
15	(a) a cage or container is seized under section 456AA because it
16	contains a seizable thing; and
17	(b) the cage or container also contains a thing (a <i>non-seizable</i>
18	<i>thing</i>) that is not a seizable thing.
19	(2) The non-seizable thing may be retained until it is reasonably
20	practicable to return the thing to the person from whom it was
21	seized (or to the owner if that person is not entitled to possess it).
22	(3) As soon as practicable after the end of the period during which the
23	non-seizable thing may be retained under subsection (2), the
24	Secretary must cause reasonable steps to be taken to return the
25	thing to the person from whom it was seized (or to the owner if the
26	person is not entitled to possess it).
27	(4) Subsection (3) does not apply if:
28	(a) the non-seizable thing is forfeited or forfeitable to the
29	Commonwealth; or
30	(b) the non-seizable thing has been dealt with under this Part, or
31	as otherwise authorised (by a law, or an order of a court, of
32	the Commonwealth or of a State or Territory), in a way that
33 34	means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or
35	(c) the Commonwealth, the Secretary or an authorised officer is
36	otherwise authorised (by a law, or an order of a court, of the
	,

1 2		Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the non-seizable thing.
3	758	Subsection 472(2)
4 5 6 7		Omit "If the notice of advice is given to a person who is not a Commonwealth agency, it", substitute "If the decision to give the advice was not made personally by the Minister and the notice of advice is given to a person who is not a Commonwealth agency, the notice".
8	759	Paragraph 472(2)(a) Omit "Minister's".
10	760	Subsection 473(1)
11 12		Omit "Applications", substitute "Subject to subsections (1A) and (2), applications".
13	761	Subsection 473(1)
14		Omit "Minister's".
15	762	After subsection 473(1)
16		Insert:
17 18 19		(1A) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).
20	763	Section 478
21		Repeal the section.
22	764	After Division 14 of Part 17
23		Insert:
24	Div	ision 14A—Federal Court's power to make remediation
25		orders
26	480 A	A Remediation orders
27		(1) If, after the commencement of this section, a person has engaged,
28 29		or is engaging, in conduct constituting an offence or other contravention of this Act or the regulations, the Federal Court may

1 2 3 4		1	make an order (a <i>remediation order</i>) requiring the person to take action (the <i>remediation action</i>) to repair or mitigate damage that may or will be, or that has been, caused to the environment by the contravention.
5			In considering whether to grant a remediation order, the matters to
6 7			which the Federal Court may have regard include (but are not limited to) the following:
8			(a) the nature and extent of the contravention;
			(b) the nature and extent of the damage to the environment that
9 10			may or will be, or that has been, caused by the contravention;
11			(c) the circumstances in which the contravention took place;
12			(d) whether the person has previously been found by a court in
13			proceedings under this Act or the regulations to have engaged
14			in any similar conduct;
15			(e) the cost to the person of taking the remediation action.
16		(3)	The description in a remediation order of the remediation action
17			may either be in general terms (for example, requiring the person
18			to take whatever action is necessary to repair or mitigate the
19 20			damage), or it may require the person to take particular action to repair or mitigate the damage.
20		1	repair of mitigate the damage.
21			If the Federal Court makes a remediation order, it may also make
22			an order requiring the person to provide security for the due taking
23		(of the remediation action.
24		(5)	Application to the Federal Court for a remediation order may only
25		1	be made by the Minister.
26	480B	Disch	narge of remediation orders
27		(On application by the Minister, the Federal Court may discharge or
28			vary a remediation order.
29	480C	Powe	ers conferred are in addition to other powers of the Court
30			The powers conferred on the Federal Court by this Division are in
31		;	addition to (and do not limit) any other powers of the Court.

Division 14B—Minister's power to make remediation determinations

3	Subdivision A—Making of remediation determinations
4	480D Minister may make remediation determination
5	(1) If:
6	(a) the Minister considers that an action taken by a person after
7 8	the commencement of this section contravened a civil penalty provision of Part 3; and
9 10	(b) the Minister considers it desirable to make an order under this section in relation to the action;
11	the Minister may make a written determination (a remediation
12	determination) requiring the person to take action to repair or
13	mitigate damage that may or will be, or that has been, caused by
14	the contravention, to the matter protected by the provision of
15	Part 3.
16	(2) The Minister cannot make a remediation determination at a time
17	that is more than 6 years after the time when the person took the
18	action referred to in paragraph (1)(a).
19	(3) A remediation determination is not a legislative instrument.
20	480E Contents of a remediation determination
21	(1) A remediation determination must specify the following:
22	(a) the person (the <i>specified person</i>) referred to in paragraph
23	480D(1)(a);
24	(b) the action (the <i>specified action</i>) referred to in that paragraph;
25	(c) the civil penalty provision (the <i>specified civil penalty</i>
26	provision) of Part 3 referred to in that paragraph;
27	(d) the action (the <i>remediation action</i>) that the person is required
28	to take.
29	(2) A remediation determination may do all or any of the following in
30	relation to some or all of the remediation action:
31	(a) require action to be taken in a specified place;
32	(b) require action to be taken at, or by, a specified time;

1 2	(c)	require a specified industry standard or code of practice to be complied with in taking action;
3	(d)	require the taking of reasonable steps to obtain any
4 5		Commonwealth, State or Territory approval or authority needed to carry out action;
6	(e)	require the preparation, and submission to the Minister for
7		approval, of a plan for taking action, and require action to be
8 9		taken in accordance with the plan as approved by the Minister;
10	(f)	require the spending of a specified amount of money on the
11		taking of action;
12	(g)	require the payment to a specified person of a specified
13		amount or money, for the purpose of activities directed
14 15		towards the protection and conservation of the matter protected by the specified civil penalty provision;
16	(h)	require the payment to the Commonwealth of a specified
17	()	amount of money as security for the due taking of action;
18	(i)	provide for monitoring, auditing, or reporting to the Minister
19		in relation to the taking of action.
20	(3) A rer	nediation determination must contain a statement to the effect
21	that t	he specified person may apply for a reconsideration of the
22		mination under section 480J.
23	480F Notifying	owners and occupiers of land of proposed
24	remo	ediation determination
25	(1) Before	re the Minister makes a remediation determination that
26	-	res action to be taken on land that is not owned or occupied
27	by th	e person proposed to be specified in the order, the Minister
28	must	
29	(a)	take all practicable steps to identify each person who is an
30		owner or occupier of all or part of the land; and
31	(b)	take all practicable steps to advise each person identified of
32		the remediation determination that the Minister proposes to
33		make; and
34	(c)	give persons advised at least 20 business days to comment in
35		writing to the Minister on the proposed remediation
36		determination.

1 2		(2) The Minister must take the comments into account in deciding whether to make the proposed remediation determination.
3	480G	Notifying that remediation determination has been made
3	1000	
4 5		As soon as practicable after a remediation determination is made, the Minister must:
6		(a) give the specified person a copy of the determination; and
7		(b) take all practicable steps to advise each person identified as
8 9		mentioned in paragraph $480F(1)(a)$ of the making of the remediation determination.
10	480H	Duration of remediation determinations
11		(1) A remediation determination comes into force:
12		(a) if a commencement day is specified in the determination (not
13		being a day before paragraph 480G(a) is complied with)—on
14		that day; or
15		(b) otherwise—when paragraph 480G(a) is complied with.
16		(2) The determination remains in force:
17		(a) for the period (if any) specified in the order; or
18		(b) until it is set aside by the Federal Court under Subdivision B
19		or it is revoked by the Minister under Subdivision D.
20	480J	Ministerial reconsideration of remediation determinations
21		(1) Within 20 days after receiving a copy of a remediation
22		determination as required by paragraph 480G(a), the specified
23		person may apply to the Minister for a reconsideration of the
24		determination.
25		(2) On receipt of an application for reconsideration of a remediation
26		determination, the Minister may affirm, vary or set aside the
27		determination.
28		(3) The Minister may take account of information and comments from
29		any source the Minister considers appropriate in deciding what
30		action to take in relation to an application under this section.
31		(4) The Minister must:

1 2 3 4 5		advise the specified person of the Minister's decision in relation to an application under this section; and take all practicable steps to advise each person identified as mentioned in paragraph 480F(1)(a) of the Minister's decision in relation to an application under this section.
6		—Federal Court may set aside remediation
7	dete	ermination
8 9	480K Applying set a	to Federal Court to have remediation determination side
10	(1) With	in 28 days after any of the following:
11 12	(a)	the specified person receives a copy of a remediation determination as required by paragraph 480G(a); or
13 14	(b)	a remediation determination is affirmed or varied under section 480J; or
15 16	(c)	a remediation determination is varied by the Minister under Subdivision D;
17 18		pecified person may apply to the Federal Court to have the diation determination set aside.
19 20		n application under subsection (1), the Federal Court must set the remediation determination if the Court is satisfied that:
21	(a)	the specified action did not occur; or
22		the specified person did not take the specified action; or
23 24	(c)	the specified action was not a contravention of the specified civil penalty provision; or
25 26	(d)	the remediation action is not a reasonable measure to repair or mitigate damage that may or will be, or that has been,
27		caused by the specified action to the matter protected by the
28		specified civil penalty provision.
29		nsidering whether the remediation determination is a
30		onable measure to repair or mitigate damage that may or will
31		r that has been, caused by the specified action to the matter
32 33		cted by the specified civil penalty provision, the Federal Court have regard to the following:
33 34		the nature and extent of the specified action;
J +	(a)	the nature and extent of the specifica action,

1 2 3 4	(b) the nature and extent of the damage to the environment that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision;
5	(c) the circumstances in which the specified action took place;
6 7	(d) whether the specified person has previously been found by a court in proceedings under this Act or the regulations to have
8	engaged in any similar conduct;
9 10	(e) the cost to the specified person of taking the remediation action.
11 12	The Federal Court may also have regard to any other matters it considers relevant.
13 14	(4) The Federal Court must not set aside the remediation determination unless it is satisfied as mentioned in subsection (2).
15	Subdivision C—Complying with remediation determinations
16 17	480L Federal Court may order compliance with remediation determination
18 19 20	(1) If the Minister considers that the specified person has contravened a remediation determination, the Minister may apply to the Federal Court for an order under subsection (2).
21 22 23	(2) If the Federal Court is satisfied that the specified person has contravened a remediation determination, the Court may make one or more of the following orders:
24 25	 (a) an order directing the specified person to comply with the remediation determination;
26	(b) any other order that the Court considers appropriate.
27	480M Civil penalty for contravention of remediation determination
28 29	(1) The specified person must not contravene a remediation determination.
30 31 32 33 34	(2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order the specified person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person to pay under that section for a contravention of the specified civil penalty provision.
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1 2	Subdivision D—Variation or revocation of remediation determinations
3	480N Variation or revocation of remediation determination
4 5	(1) The Minister may, in writing, vary or revoke a remediation determination.
6 7 8	(2) Sections 480F and 480G apply in relation to the variation or revocation of a remediation determination in the same way as they apply in relation to the making of a remediation determination.
9	765 Section 486
10	Repeal the section.
11	766 At the end of Division 15 of Part 17
12	Add:
13 14	Subdivision C—Enforceable undertakings relating to contraventions of Part 3 civil penalty provisions
15 16	486DA Acceptance of undertakings relating to contraventions of Part 3 civil penalty provisions
17 18 19	(1) This section applies if the Minister considers that an action taken by a person after the commencement of this section contravened a civil penalty provision of Part 3.
20 21 22	(2) The Minister may accept a written undertaking given by the person in relation to the action, in which the person undertakes to pay a specified amount, within a specified period:(a) to the Commonwealth; or
23 24 25 26 27	(a) to the Commonwealth, of(b) to some other specified person, for the purpose of activities directed towards the protection and conservation of the matter protected by the civil penalty provision referred to in subsection (1).
28 29	(3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Minister.

486DI	3 Enforcement of undertakings
	(1) If the Minister considers that a person who gave an undertaking
	under section 486DA has breached any of its terms, the Minister
	may apply to the Federal Court for an order under subsection (2).
	(2) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Court may make one or more of the following orders:
	(a) an order directing the person to comply with that term of the undertaking;
	(b) any other order that the Court considers appropriate.
767 A	After Division 15 of Part 17
	Insert:
D. .	
Divis	ion 15A—Notices to produce or attend
486E	Application of Division
	(1) This Division applies if the Minister believes, on reasonable grounds, that a person is capable of giving information, or producing books, records or documents, that are relevant for the
	purposes of investigating or preventing:
	(a) an offence against this Act or the regulations; or
	(b) a contravention of a civil penalty provision.
	(2) In this Division:
	<i>official</i> means the Minister, an officer or employee in the Department, or the Director.
486F	Minister may require person to provide information etc.
	(1) The Minister may, by written notice, require the person to give to
	an official specified in the notice, in the manner and within the
	period specified in the notice:
	(a) such information as is specified in the notice; or
	(b) any book, record or document that is specified in the notice.
	The period must end not less than 14 days after the notice is given

1 2	(2) A notice under subsection (1) must set out the effect of section 491 of this Act and of sections 137.1 and 137.2 of the <i>Criminal Code</i> .			
3	(3) A person commits an offence if:			
4	(a) the person is required to give information or a book, record			
5	or document to an official under subsection (1); and			
6	(b) the person does not give the information, book, record or			
7	document to the official.			
8	Penalty: Imprisonment for 6 months.			
9 10	Note: Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.			
11	486G Minister may require person to appear before Minister			
12	(1) The Minister may, by written notice, require the person to appear			
13	before an official specified in the notice, at a time and place			
14	specified in the notice:			
15	(a) to answer any questions put by the official; and			
16	(b) to produce to the official such books, records or documents			
17	as are specified in the notice.			
18	The time must not be earlier than 14 days after the notice is given.			
19	(2) A notice under subsection (1) must set out the effect of section 491			
20	of this Act and of sections 137.1 and 137.2 of the Criminal Code.			
21	(3) A person commits an offence if:			
22	(a) the person is required to appear before an official under			
23	subsection (1); and			
24	(b) the person does not appear before the official			
25	Penalty: Imprisonment for 6 months.			
26	(4) A person commits an offence if:			
27	(a) the person is required to appear before an official under			
28	subsection (1); and			
29	(b) when appearing before the official, the person does not:			
30	(i) answer a question put by the official; or			
31	(ii) produce a book, record or document to the official as			
32	required by the notice given under that subsection.			
33	Penalty: Imprisonment for 6 months.			

1 2	Note: Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.	
3	486H Persons to whom notices may not be given	
4	A notice under subsection 486F(1) or 486G(1) must not be give	n to
5	a person if the person is, or has been, a lawyer for:	
6	(a) if the notice relates to the investigation or prevention of a	l
7	offence against this Act or the regulations—the person	
8	suspected of having committed the offence; or	
9	(b) if the notice relates to the investigation or prevention of a	
10	contravention of a civil penalty provision—the person	
1	suspected of having contravened the provision.	
12	486J Self-incrimination	
13	(1) An individual is not excused from giving information (includin	bv
4	answering a question), or from giving or producing a book, reco	-
5	or document, under this Division on the ground that the	
6	information, or the giving or production of the book, record or	
17	document, might tend to incriminate the individual or expose the	e
8	individual to a penalty.	
9	(2) However:	
20	(a) the information given, or the book, record or document gi	/en
21	or produced; or	
22	(b) giving the information, or giving or producing the book	
23	record or document; or	
24	(c) any information, document or thing obtained as a direct of	
25	indirect consequence of giving the information, or giving	or
26	producing the book, record or document;	
27	is not admissible in evidence against the person:	
28	(d) in any civil proceedings; or	
29	(e) in any criminal proceedings other than:	
80	(i) proceedings for an offence against subsection 486F()
31	or 486G(3) or (4); or	
32	(ii) proceedings for an offence against section 491 that	
33	relates to a requirement under this Division; or	
34	(iii) proceedings for an offence against section 137.1 or	
35	137.2 (false or misleading information or documents	10 (

1 2	the <i>Criminal Code</i> that relates to a requirement under this Division.
3	768 After subparagraph 495(2)(a)(vii)
4	Insert:
5 6	(viia) section 27C (Offences relating to Commonwealth heritage places overseas); or
7	769 After Division 18 of Part 17
8	Insert:
9 10	Division 18A—Liability of landholders for other people's actions
11	496A Who is a landholder?
12	For the purposes of this Division, a <i>landholder</i> , in relation to an
13 14	area of land, is a person who is an owner, lessee or occupier of the area of land.
15	496B Civil penalties for landholders
16	(1) If:
17 18	(a) a person (the <i>actor</i>) takes an action on an area of land that is a contravention of:
19	(i) a provision of Part 3 that is a civil penalty provision; or
20	(ii) section 142; and
21	(b) a landholder in relation to the area of land knew that, or was
22	reckless or negligent as to whether, the contravention would
23	occur; and (a) the lendholder was in a position to influence the conduct of
24 25	(c) the landholder was in a position to influence the conduct of the actor in relation to the contravention; and
26	(d) the landholder failed to take all reasonable steps to prevent
27	the contravention;
28	the landholder contravenes this subsection.
29	(2) Subsection (1) is a civil penalty provision. Under section 481, the
30	Federal Court may order a landholder contravening subsection (1)
31	to pay a pecuniary penalty not more than the pecuniary penalty the

1	Court could order the landholder to pay, if the landholder had
2	contravened the civil penalty provision contravened by the actor.
3	496C Criminal liability of landholders
4	(1) If:
5	(a) a person (the <i>actor</i>) takes an action on an area of land that
6	contravenes:
7	(i) section 15A (Offences relating to declared World
8	Heritage properties); or
9 10	(ii) section 15C (Offences relating to National Heritage places); or
11 12	(iii) section 17B (Offences relating to declared Ramsar wetlands); or
13 14	(iv) section 18A (Offences relating to threatened species etc.); or
15 16	(v) section 20A (Offences relating to listed migratory species); or
17	(vi) section 22A (Offences relating to nuclear actions); or
18	(vii) section 24A (Offences relating to marine areas); or
19	(viii) section 27A (Offences relating to marine areas), of
20	or
21	(ix) section 142A (Offence of breaching conditions on
22	approval); and
23	(b) a landholder in relation to the area of land was reckless as to
24	whether the contravention would occur; and
25	(c) the landholder was in a position to influence the conduct of
26	the actor in relation to the contravention at the time when the
27	contravention occurred; and
28	(d) the landholder failed to take all reasonable steps to prevent
29	the contravention;
30	the landholder commits an offence.
31 32	Note: Chapter 2 of the <i>Criminal Code</i> sets out the general principles of criminal responsibility.
33	(2) An offence against subsection (1) is punishable on conviction by
34	imprisonment for the term specified in the provision contravened
35	by the actor, a fine of the amount specified in that provision, or
36	both.

1 2 3	Note: Subsection 4B(3) of the <i>Crimes Act 1914</i> lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under the provision.
4	496D Did a landholder take reasonable steps to prevent a contravention?
5	contravention:
6	(1) For the purposes of sections 496B and 496C, in determining
7	whether a landholder failed to take all reasonable steps to prevent
8	the contravention, a court is to have regard to:
9 10	(a) what action (if any) the landholder took directed towards ensuring that the actor had an appropriate system established
11	for managing the effects of the actor's activities on the
12	environment; and
13	(b) what action (if any) the landholder took upon becoming
14	aware that there was a substantial risk that the actor was
15	contravening provisions of this Act referred to in subsection
16	496B(1) or $496C(1)$, as the case requires.
17 18	(2) This section does not, by implication, limit the generality of sections 496B and 496C.
19	770 Subsection 497(1)
20	After "against", insert "section 142B or".
21	771 Subsection 497(2)
22	Omit "equal", substitute "not exceed".
23	772 Subsection 498A(1)
24	After "by this Part", insert ", Schedule 1 (in the case of an authorised
25	officer)".
26	773 Subsection 498A(2)
27	After "by this Part,", insert "by Schedule 1 (in the case of an authorised
28	officer),".
29	774 At the end of Part 17
30	Add:

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Division 22—Conduct of directors, employees and agents

498B Conduct of directors, employees and agents

Bodies corporate—conduct

(1)	Any conduct	angagad in on	bobolf of o	hody corporate

- (1) Any conduct engaged in on behalf of a body corporate:
 - (a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

Bodies corporate—state of mind

- (2) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a person as mentioned in paragraph (1)(a) or (b); and
 - (b) that the person had that state of mind.

Persons other than bodies corporate—conduct

- (3) Any conduct engaged in on behalf of a person other than a body corporate:
 - (a) by an employee or agent of the person within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;

1 2 3 4	also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
5	Persons other than bodies corporate—state of mind
6 7 8	(4) If, for the purposes of this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
9 10	(a) that the conduct was engaged in by a person as mentioned in paragraph (3)(a) or (b); and
11	(b) that the person had that state of mind.
12	Reasonable precautions
13 14	(5) For the purposes of subsection (1) or (3), in determining whether a body corporate or other person took reasonable precautions and
15	exercised due diligence to avoid particular conduct, a court must
16	have regard to what steps (if any) the body or person took directed
17	towards ensuring the following (to the extent that the steps are
18	relevant to the conduct):
19 20	 (a) that the body or person arranges regular professional assessments of the body's or person's compliance with this Act and the regulations;
21 22 23	(b) that the body or person implements any appropriate recommendations arising from such an assessment;
24 25	(c) that the body or person has an appropriate system established for managing the effects of the body's or person's activities
26	on the environment;
27	(d) that the directors of the body, or the employees or agents of the body or person, have a reasonable knowledge and
28 29	understanding of the requirements to comply with this Act
30	and the regulations, in so far as those requirements affect the
31	directors, employees or agents concerned.
32	Meaning of state of mind
33	(6) A reference in subsection (2) or (4) to the <i>state of mind</i> of a person
34	includes a reference to:
35 36	(a) the knowledge, intention, opinion, belief or purpose of the person; and

1 2	(b) the person's reasons for the intention, opinion, belief or purpose.
3	Meaning of director
4	(7) A reference in this section to a <i>director</i> of a body corporate
5	includes a reference to a constituent member of a body corporate
6 7	incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
8	Meaning of engage in conduct
9 10	(8) A reference in this section to <i>engaging in conduct</i> includes a reference to failing or refusing to engage in conduct.
11	Disapplying Part 2.5 of Criminal Code
12 13	(9) Part 2.5 of the <i>Criminal Code</i> does not apply to an offence against this Act.
14 15	Note: Part 2.5 of the <i>Criminal Code</i> deals with corporate criminal responsibility.
16	775 Paragraph 503(a)
17	Omit "the making of recovery plans and threat abatement plans",
18	substitute "recovery plans, threat abatement plans and approved
19	conservation advice".
20	776 After paragraph 514B(1)(b)
21	Insert:
22	(ba) to contribute to the protection, conservation and management
23	of biodiversity and heritage in areas outside Commonwealth
24	reserves and conservation zones; and
25	777 Paragraph 514B(1)(h)
26	After "under", insert "this or".
27	778 Subsection 514B(1) (note)
28	Repeal the note, substitute:
29 30	Note 1: Section 514D sets out requirements relating to the performance of the Director's functions.

1 2	Note 2: The Minister may delegate additional functions to the Director under subsection 515(1).
3	779 After section 517
4	Insert:
5	517A Exemption for activities that might harm particular species
6	introduced into particular areas
7	Provisions for which this section applies
8 9	(1) This section applies for the purposes of the provisions of the following sections:
10	(a) sections 18 and 18A;
11	(b) sections 20 and 20A;
12	(c) sections 196 to 196E;
13	(d) section 207B;
14	(e) sections 211 to 211E;
15	(f) sections 254 to 254E.
16	Minister may exempt carrying on of activities
17	(2) The Minister may, in writing, exempt from the provisions
18	mentioned in subsection (1) the carrying on of particular activities
19	by particular persons (or a particular class of persons), in a
20	particular area, that will or may have an impact on a particular
21	species or its habitat. The species must be a listed threatened
22	species, a listed migratory species or a listed marine species.
23	Matters Minister must be satisfied of
24	(3) An exemption under subsection (2) may only be given if the
25	Minister is satisfied that:
26	(a) members of the species have been, or are proposed to be,
27	introduced into the area by or on behalf of a person (whether
28	the person is a Commonwealth agency or otherwise); and
29	(b) the purpose of the introduction, or proposed introduction, of
30	the members of the species into the area was or is to make a
31	contribution to the conservation of the species; and
32	(c) carrying on the activities in the area will or may have an
33	impact on members of the species, or their habitat, but any

1 2	such impact would be incidental to, and not the purpose of, the activities; and
3	(d) if the person referred to in paragraph (a) is not the person
4	who is or will be primarily responsible for carrying out the
5	activities—the person who is or will be so responsible has
6 7	agreed to the introduction of the members of the species into the area.
8	(4) For the purpose of deciding whether to give an exemption under
9	subsection (2), the Minister may (subject to subsection (3)):
10	(a) have regard to any matters the Minister considers
11	appropriate; and
12 13	(b) seek, and have regard to, information or advice from any source.
14	What must be specified in an exemption
15	(5) An exemption under subsection (2) must:
16	(a) specify the species to which it applies; and
17	(b) specify the area to which it applies; and
18	(c) specify the activities to which it applies; and
19	(d) specify the persons (or classes of persons) who, if they
20	engage in actions that are within the activities, are covered by
21	the exemption.
22	When an exemption comes into force
23	(6) An exemption under subsection (2) comes into force on the day the
24	Minister gives the exemption, or on a later day specified in the
25	exemption.
26	Actions covered by exemption do not contravene provisions for
27	which this section applies
28	(7) While an exemption under subsection (2) is in force, an action of a
29	person does not contravene any of the provisions mentioned in
30	subsection (1), in so far as the provisions apply in relation to a
31	member of the species specified as mentioned in paragraph (5)(a), if:
32	
33 34	(a) the action occurs in the area specified as mentioned in paragraph (5)(b); and
J +	paragraph (5)(0), and

1 2		(b) the action is within the activities specified as mentioned in paragraph (5)(c); and
3		(c) the person is a person, or is a member of a class of persons,
4		specified as mentioned in paragraph (5)(d).
5		Note 1: If the action also has an impact on a member of another species that is
6 7		not covered by an exemption under subsection (2), subsection (7) does not affect the question whether the action may contravene a provision
8		mentioned in subsection (1), in so far as the provision applies to the
9		other species.
10		Note 2: In a prosecution for an offence against a provision mentioned in
11 12		subsection (1), the defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the <i>Criminal</i>
13		Code.
14		Exemption is not a legislative instrument
15	(8)	An exemption under subsection (2) is not a legislative instrument.
16	780 Afte	r section 520
17	Inse	ert:
18	520A Stat	tements about the application of the Act
19	(1)	The Minister may issue, in writing, statements about the way in
20		which the Minister considers that provisions of the Act or the
21		regulations apply or would apply to:
22		(a) persons generally or a class of persons; or
23		(b) persons generally or a class of persons in relation to
24		particular circumstances.
25	(2)	A statement made under subsection (1) is not a legislative
26		instrument.
27	781 Afte	r subsection 525(2)
28	Inse	ert:
29		Freehold land in Christmas Island Territory is not a
30		Commonwealth area
31	(2A)	Despite subparagraph (1)(c)(i), an area of land in the Territory of
32		Christmas Island is not a <i>Commonwealth area</i> merely because of
33		that subparagraph if a person holds a freehold interest in the land.

1	782	Before subsection 525(3)
2		Insert:
3		Freehold land in Cocos (Keeling) Islands Territory is not a Commonwealth area
5 6 7 8		(2B) Despite subparagraph (1)(c)(i), an area of land in the Territory of Cocos (Keeling) Islands is not a <i>Commonwealth area</i> merely because of that subparagraph if a person holds a freehold interest in the land.
9	783	At the end of Division 1 of Part 23
0		Add:
1	Sub	division F—Impacts
2	527I	E Meaning of impact
3		(1) For the purposes of this Act, an event or circumstance is an <i>impact</i> of an action taken by a person if:
5 6		(a) the event or circumstance is a direct consequence of the action; or
7 8 9		(b) for an event or circumstance that is an indirect consequence of the action—subject to subsection (2), the action is a substantial cause of that event or circumstance.
20		(2) For the purposes of paragraph (1)(b), if:
1 2		(a) a person (the <i>primary person</i>) takes an action (the <i>primary action</i>); and
3 4 .5		(b) as a consequence of the primary action, another person (the secondary person) takes another action (the secondary action); and
.6 .7		(c) the secondary action is not taken at the direction or request of the primary person; and
.8 .9		(d) an event or circumstance is a consequence of the secondary action;
0		then that event or circumstance is an <i>impact</i> of the primary action only if:
32		(e) the primary action facilitates, to a major extent, the secondary action; and

1		(f) the secondary action is:
2		(i) within the contemplation of the primary person; or
3		(ii) a reasonably foreseeable consequence of the primary
4		action; and
5		(g) the event or circumstance is:
6		(i) within the contemplation of the primary person; or
7 8		(ii) a reasonably foreseeable consequence of the secondary action.
9	784	Section 528
10		Insert:
11 12		accredited authorisation process has the meaning given by subsection 33(2A).
13	785	Section 528
14		Insert:
15		accredited management arrangement has the meaning given by
16		subsection 33(2).
17	786	Section 528 (definition of accredited management plan)
18		Repeal the definition.
19	787	Section 528
20		Insert:
21		Antarctic has the same meaning as in the Antarctic Treaty
22		(Environment Protection) Act 1980.
23	788	Section 528 (definition of Apia Convention)
24		Omit "as in force for Australia immediately before the commencement
25		of this Act", substitute "as amended and in force for Australia from time
26		to time".
27	789	Section 528
28		Insert:
29		approved conservation advice has the meaning given by
30		subsection 266B(2).

1 2	790	Section 528 (definition of <i>Australian platform</i>) Repeal the definition.
3	791	Section 528
4		Insert:
5 6		Australian Whale Sanctuary has the meaning given by subsection 225(2).
7	792	Section 528 Insert:
9 10 11		authorisation process means a process set out in a law of the Commonwealth or a State or Territory under which actions are authorised.
12	793	Section 528
13		Insert:
14		bilaterally accredited authorisation process has the meaning given by subsection 46(2A).
16	794	Section 528
17		Insert:
18		<i>bilaterally accredited management arrangement</i> has the meaning given by subsection 46(2).
20 21	795	Section 528 (definition of bilaterally accredited management plan)
22		Repeal the definition.
23	796	Section 528 (definition of <i>Biodiversity Convention</i>)
24		Omit "as in force for Australia immediately before the commencement
25 26		of this Act", substitute "as amended and in force for Australia from time to time".
27	797	Section 528
28		Insert:

1 2		bioregional plan means a bioregional plan for a bioregion as mentioned in section 176.
3	798	Section 528 (definition of Bonn Convention)
4 5 6		Omit "as in force for Australia immediately before the commencement of this Act", substitute "as amended and in force for Australia from time to time".
7	799	Section 528 (at the end of the definition of business day)
8		Add:
9 10		Note: In Chapter 5, the meaning of <i>business day</i> is affected by section 170D.
11	800	Section 528 (definition of CAMBA)
12		Omit "as in force for Australia immediately before the commencement
13		of this Act", substitute "as amended and in force for Australia from time
14		to time".
15	801	Section 528 (definition of cetacean)
16		Repeal the definition, substitute:
17		cetacean means a member of the sub-order Mysticeti or
18		Odontoceti of the Order Cetacea, and includes:
19		(a) a part of such a member; and
20		(b) any animal reproductive material of such a member, or any part of such reproductive material; and
21 22		(c) any product derived from a such a member; and
23		(d) the whole or part of the dead body of such a member; and
24		(e) any product derived from the dead body, or part of the dead
25		body, of such a member.
26	802	Section 528 (definition of Commonwealth Heritage List)
27		Omit "kept under Subdivision B of Division 3A of Part 15", substitute
28		"referred to in section 341C".
29	803	Section 528 (definition of Commonwealth Heritage place)
30		Omit "341C(2)", substitute "341C(3)".
31	804	Section 528

	Insert:
	<i>control</i> : a Commonwealth agency <i>controls</i> a place only if the agency has rights (whether arising under a law, lease, licence or otherwise) to:
	(a) occupy or use the place; and
	(b) take actions in relation to the place that could potentially have an impact on heritage values that the place may have.
805	Section 528
	Insert:
	<i>copy</i> , when used in relation to a warrant issued under section 409 or 416 (or a form of warrant completed under subsection 409A(6) or 416(6)), includes:
	(a) a copy sent by fax or other electronic means; or
	(b) a copy of a copy so sent.
806	Section 528 (definition of ecological community)
	After "means", insert "the extent in nature in the Australian jurisdiction of".
807	Section 528 (paragraph (e) of the definition of environment)
	Omit "or (c)", substitute ", (c) or (d)".
808	Section 528 (note at the end of the definition of environment)
	Repeal the note.
809	Section 528
	Insert:
	environmental authorisation has the meaning given by
	section 43A.
810	Section 528 (definition of executing officer)
	Repeal the definition, substitute:
	repear the definition, substitute.

1 2		(a) the authorised officer named in the warrant as being responsible for executing the warrant; or
3 4 5		(b) if that authorised officer does not intend to be present at the execution of the warrant—another authorised officer whose name has been written in the warrant by the authorised
6		officer so named; or
7		(c) another authorised officer whose name has been written in
8 9		the warrant by the authorised officer last named in the warrant.
10	811	Section 528 (definition of export)
11		Repeal the definition.
12	812	Section 528 (definition of export from the sea)
13		Repeal the definition.
14	813	Section 528 (paragraph (b) of the definition of holder)
15		Omit "to whom the approval applies", substitute "named in the approval
16		under paragraph 133(2)(c)".
17	814	Section 528
18		Insert:
19		<i>impact</i> has the meaning given by section 527E.
20	815	Section 528
21		Insert:
22		important cetacean habitat area means an area declared, by a
23		declaration in force under subsection 228A(1), to be an important
24		cetacean habitat area.
25	816	Section 528 (definition of imported)
26		Repeal the definition.
27	817	Section 528 (definition of <i>JAMBA</i>)
28		Omit "as in force for Australia immediately before the commencement
29		of this Act", substitute "as amended and in force for Australia from time
30		to time".

1	818	Section 528
2		Insert:
3 4		List of Overseas Places of Historic Significance to Australia means the record referred to in section 390K.
5	819	Section 528
6		Insert:
7		management arrangement includes:
8		(a) a management plan; and
9		(b) a regime; and
10		(c) a policy.
10		(c) a poncy.
11	820	Section 528 (definition of member)
12		Repeal the definition, substitute:
13		member includes:
14		(a) in relation to a species of animal (other than a species of
15		cetacean):
16		(i) any part of an animal of the species; and
17		(ii) any animal reproductive material of an animal of the
18		species, or any part of such reproductive material; and
19		(iii) the whole or any part of the dead body of an animal of
20		the species; and
21		(b) in relation to a species of plant:
22		(i) any part of a plant of the species; and
23		(ii) any plant reproductive material of a plant of the species
24		or any part of such reproductive material; and
25		(iii) the whole or any part of a plant of the species that has
26		died; and
27		(c) in relation to an ecological community:
28		(i) any part of an animal or plant of the community; and
29		(ii) any animal reproductive material of an animal, or plant
30		reproductive material of a plant, of the community, or
31 32		any part of such animal reproductive material or plant reproductive material; and
33		(iii) the whole or any part of an animal or plant of the
34		community that has died.

1	821	Section 528
2		Insert:
3 4		<i>migration zone</i> has the same meaning as in the <i>Migration Act</i> 1958.
5	822	Section 528
6		Insert:
7		migratory species has the meaning given by subsection 209(8).
8 9 10	823	Section 528 (definition of <i>National Heritage List</i>) Omit "kept under Subdivision B of Division 1A of Part 15", substitute "referred to in section 324C".
11 12	824	Section 528 (definition of <i>National Heritage place</i>) Omit "324C(2)", substitute "324C(3)".
13 14	825	Section 528 Insert:
15 16		Officer of Customs has the same meaning as in the Customs Act 1901.
17	826	Section 528 (paragraph (a) of the definition of <i>place</i>)
18		After "region", insert "or a number of locations, areas or regions".
19	827	Section 528 (definition of Ramsar Convention)
20		Omit "as in force for Australia immediately before the commencement
21 22		of this Act", substitute "as amended and in force for Australia from time to time".
23	828	Section 528
24		Insert:
25 26		<i>remediation determination</i> means a determination, as in force from time to time, made under section 480D.
27	829	Section 528
28		Insert:

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1 2		<i>remediation order</i> means an order, as in force from time to time, made under section 480A.
3	830	Section 528
4		Insert:
5		seized has a meaning affected by section 406B.
6	831	Section 528
7		Insert:
8 9		<i>specific environmental authorisation</i> has the meaning given by section 43A.
10	832	Section 528
11		Insert:
12		take, except in Part 13A, includes:
13		(a) in relation to an animal—harvest, catch, capture and trap; and
14		(b) in relation to a plant—harvest, pick, gather and cut.
15		Note: For the meaning of <i>take</i> in Part 13A, see section 303BC.
16	833	Section 528 (definition of <i>Trade</i>)
17		Repeal the definition, substitute:
18		trade:
19		(a) when used in the context of a reference to a member of a
20		listed threatened species, listed migratory species, listed
21		marine species or listed threatened ecological community—
22		includes:
23		(i) buy the member, agree to receive it under an agreement
24		to buy, agree to accept it under such an agreement or
25		acquire it by barter; or
26 27		(ii) sell the member, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the
28		purpose of sale, receive it for the purpose of sale or
29		dispose of it by barter for the purpose of gain or
30		advancement; or
31		(iii) export the member from Australia or an external
32		Territory or import it into Australia or an external
33		Territory; or

1 2	(iv) cause or allow any of the acts referred to in subparagraph (i), (ii) or (iii) to be done; or
3	(b) when used in the context of a reference to a cetacean (not
4	being a reference that covers a cetacean because a cetacean is
5	a member referred to in paragraph (a))—has the meaning
6	given by subsection 229B(4).
7	834 Section 528 (definition of World Heritage Convention)
8	Omit "as in force for Australia immediately before the commencement
9	of this Act", substitute "as amended and in force for Australia from time
10	to time".
11	835 At the end of the Act
12	Add:
13	Schedule 1—Provisions relating to detention
14	of suspected foreign offenders
	•
15	Note: See section 433B.
16	Part 1—Preliminary
17	Division 1—Objects of this Schedule
18	1 Main objects of this Schedule
19	(1) This Schedule has 3 main objects.
20	(2) The first main object is to provide for the detention (environment
21	detention) in Australia or a Territory of persons who:
22	(a) are reasonably suspected by an authorised officer of having
23	committed an offence:
24	(i) involving the use of a foreign vessel; or
25 26	(ii) in the Australian jurisdiction but outside the migration zone; and
26 27	(b) are not Australian citizens or Australian residents;
28	for a limited period for the purposes of determining whether to
29	charge them with the offence.

1	(3)	The second main object is to provide for persons in environment
2		detention to be searched, screened, given access to facilities for
3		obtaining legal advice, and identified.
4	(4)	The third main object is to facilitate the transition of persons from
5		environment detention to immigration detention under the
6		Migration Act 1958:
7		(a) by providing for the things mentioned in subclause (3) to be
8		done in a way corresponding to the way that Act provides for
9		those things to be done to persons in immigration detention;
0		and
1		(b) by authorising the disclosure of personal information about
12		individuals who are or have been in environment detention to
13		persons, agencies and organisations responsible for holding
4		the individuals in immigration detention, for the purpose of
15		the immigration detention and welfare of the individuals.
6		Note: The enforcement visa of a person who is neither an Australian citizen
17		nor an Australian resident ceases to have effect under the <i>Migration</i>
18 19		Act 1958 when the person ceases to be in environment detention, so that Act requires the person to be taken into immigration detention.
20		2—Definitions
21	2 Definition	ons
22		In this Schedule, unless the contrary intention appears:
23		approved officer means:
24		(a) an authorised officer (other than a person who is an
25		authorised officer because of subsection 397(3)); or
26		(b) a detention officer;
27		who is approved under Division 4 for the purposes of the provision
28		in which the expression occurs.
29		Australian resident means:
80		(a) a person who holds a permanent visa (as defined in the
31		Migration Act 1958) that is in effect; or
32		(b) a New Zealand citizen who is usually resident in Australia or
33		a Territory and who holds a special category visa (as defined
34		in the Migration Act 1958) that is in effect; or
35		
, ,		(c) any other person who is usually resident in Australia or a
36		(c) any other person who is usually resident in Australia or a Territory and whose continued presence in Australia or a

1 2	Territory is not subject to a limitation as to time imposed by law.
3 4	authorised Migration Act officer means an authorised officer, within the meaning of the Migration Act 1958.
5	detainee means a person detained under Part 2.
6	detention means detention under Part 2.
7 8	<i>detention officer</i> means a person appointed under clause 3 to be a detention officer.
9	foreign vessel means a vessel that is not an Australian vessel.
10	Division 3—Appointment etc. of detention officers
11	3 Minister may appoint persons to be detention officers
12	(1) The Minister may, by instrument, appoint one or more persons
13 14	(except persons who are authorised officers) to be detention officers.
15 16 17	Note: Authorised officers have the same powers as detention officers, as well as other powers, so there is no reason for authorised officers to be appointed as detention officers.
18	(2) An instrument appointing persons to be detention officers:
19	(a) may identify the persons by reference to a class; and
20 21	(b) may provide for persons to be appointed when they become members of the class at or after a time specified in the
22	instrument.
23	4 Detention officers subject to directions
24 25 26	(1) A detention officer is, in the exercise of his or her powers, and the performance of his or her duties, under this Schedule, subject to the directions given by the Minister.
27 28 29	(2) A direction given by the Minister under subclause (1) is a legislative instrument, but neither section 42 nor Part 6 of the <i>Legislative Instruments Act 2003</i> applies to the direction.

1	5 Detention officer etc. not liable to certain actions
2 3 4 5 6 7	(1) A detention officer, or a person assisting a detention officer in the exercise of powers under this Schedule or the regulations, is not liable to an action, suit or proceeding for or in respect of anything done in good faith or omitted to be done in good faith in the exercise or purported exercise of any power conferred by this Schedule or by regulations made for the purposes of this Schedule.
8 9	Note: Section 498A makes similar provision for authorised officers and their assistants.
10 11	(2) However, subclause (1) does not affect a contractual liability of a detention officer or person assisting a detention officer.
12 13	Division 4—Approval of authorised officers and detention officers
14 15	6 The Secretary may approve authorised officers and detention officers
16 17 18 19 20	(1) The Secretary may, by instrument, approve one or more authorised officers and/or detention officers for the purposes of a specified provision of this Schedule, from among authorised officers and/or detention officers who have successfully completed minimum training prescribed by the regulations.
21 22	(2) An instrument approving authorised officers and/or detention officers:
23 24 25 26	(a) may identify them by reference to a class; and(b) may provide for them to be approved when they become members of the class at or after a time specified in the instrument.
27 28	7 Persons who are authorised officers for purposes of the <i>Migration</i> Act 1958 are taken to be approved for this Schedule
29	(1) A person who:
30	(a) is an authorised officer or a detention officer; and (b) is an authorised Migratian Act officer for a provision of the
31 32	(b) is an authorised Migration Act officer for a provision of the <i>Migration Act 1958</i> listed in column 2 of an item of the table;

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is, while he or she meets the conditions in paragraphs (a) and (b), taken to be approved under clause 6 for the purposes of the provision of this Schedule listed in column 3 of the item.

Corresponding provisions of the Migration Act 1958 and this Schedule Column 1 Column 2 Column 3 **Item Provision of the Migration Act Provision of this Schedule** 1958 1 Subsection 252(4) Subclause 15(3) 2 Paragraph 252(6)(a) Paragraph 15(5)(a) 3 Subparagraph 252(6)(b)(i) Subparagraph 15(5)(b)(i) 4 Subsection 252AA(1) Subclause 16(1) 5 Subsection 252A(1) Subclause 17(1) 6 Subsection 252C(1) Subclause 19(1) 7 Subsection 252D(2) Subclause 20(2) 8 Subsection 252G(3) Subclause 22(3) 9 Section 261AA Clause 28 10 Subsection 261AE(1) Subclause 32(1) 11 Subsection 261AE(3) Subclause 32(3) 12 Section 261AG Clause 34 13 Section 261AJ Clause 37 14 Subsection 261AK(1) (except Subclause 38(1) (except paragraph (a)) paragraph (a)) 15 Subsection 261AK(3) Subclause 38(3)

Limits on approval

(2) However, the person is not taken to be approved to carry out an identification test in relation to which section 5D of the *Migration Act 1958* provides that the person is not an authorised officer (for the purposes of that Act).

Note: This is relevant to items 9 to 15 of the table in subclause (1).

Persons specified by Secretary not approved

- (3) The Secretary may, by instrument, specify that the person is not taken to be approved:
 - (a) for the purposes of the provision of this Schedule; or

1 2 3	(b) for the purposes of carrying out under this Schedule identification tests of a type specified under section 5D of the <i>Migration Act 1958</i> in relation to the person.
4 5	The instrument has effect according to its terms, despite subclause (1).
6 7 8	(4) An instrument under subclause (3) may specify one or more persons by reference to their being members of a specified class at or after a time specified in the instrument.
9 10	(5) An instrument made under subclause (3) is not a legislative instrument.
11	Part 2—Detaining suspected foreign offenders
12	Division 1—Initial detention by an authorised officer
13	8 Power to detain
14	(1) An authorised officer may detain a person in Australia or a
15	Territory for the purposes of determining during the period of
16	detention whether or not to charge the person with an offence
17	against this Act or the regulations, or an offence against section 6
18	of the <i>Crimes Act 1914</i> relating to such an offence, if the
19	authorised officer has reasonable grounds to believe that the
20	person:
21	(a) is not an Australian citizen or an Australian resident; and
22	(b) either or both of the following:
23 24	(i) was on a foreign vessel when it was used or otherwise involved in the commission of the offence;
	(ii) committed the offence in the Australian jurisdiction but
25 26	outside the migration zone.
27	(2) Subclause (1) does not authorise an authorised officer to use more
28	force in detaining a person than is reasonably necessary.
29	9 Relationship with Part IC of the Crimes Act 1914
30	(1) Part IC of the <i>Crimes Act 1914</i> applies in relation to the detainee
31	while detained under this Part as if:

1 2	(a) he or she were a protected suspect for a Commonwealth offence for the purposes of that Part; and
3	(b) an authorised officer were an investigating official for the
4	purposes of that Part.
5	(2) Subclause (1) does not affect the operation of Division 2 of Part IC
6	of the Crimes Act 1914 as it applies of its own force in relation to a
7	person who is lawfully arrested.
8	Division 2—Continued detention by a detention officer
9 10	10 Detention officer may detain person already detained by authorised officer
11	(1) For the purposes of facilitating an authorised officer determining
12	whether or not to charge a person with an offence against this Act
13	or the regulations, or an offence against section 6 of the <i>Crimes Act</i> 1914 relating to such an offence, a detention officer may detain the
14 15	person in Australia or a Territory if the detention officer has
16	reasonable grounds to believe that the person:
17	(a) has been detained by an authorised officer under Division 1;
18	and
19 20	(b) has been presented, while detained by that authorised officer, to a detention officer for detention by a detention officer.
21	(2) However, the detention officer may not detain the person if the
22	detention officer has reasonable grounds to believe that the person
23	has ceased to be in detention since the last time the person was
24	detained by an authorised officer under Division 1.
25	(3) Subclause (1) does not authorise a detention officer to use more
26	force in detaining a person than is reasonably necessary.
27	Division 3—Detention on behalf of an authorised officer or
28	detention officer
29	11 Detention on behalf of an authorised officer or detention officer
30	(1) A person is taken to be detained by an authorised officer or
31	detention officer under this Part while the person is held, on behalf
32	of the authorised officer or detention officer, in any of the
33	following:

1	(a) a prison or remand centre;
2	(b) a police station or watch house;
3	(c) a hospital or other place where the person is receiving
4	medical treatment;
5	(d) another place approved by the Minister in writing;
6	(e) a vessel.
7	(2) This clause has effect even while the authorised officer or
8 9	detention officer is not present where the person is held on behalf of the authorised officer or detention officer.
10	(3) An approval of a place by the Minister is not a legislative
11	instrument.
12	Division 4—Moving detainees
13	12 Power to move detainees
14	(1) An authorised officer or detention officer may:
15	(a) take a detainee in Australia to another place in Australia or to
16	a place in an external Territory; and
17	(b) take a detainee in an external Territory to another place in the
18	Territory or to a place in Australia or another Territory.
19	(2) Subclause (1) does not authorise an authorised officer or detention
20	officer to use more force than is reasonably necessary to take the
21	detainee to the place.
22	(3) In exercising the power under subclause (1), the authorised officer
23	or detention officer must have regard to all matters that he or she
24	considers relevant, including:
25	(a) the administration of justice; and
26	(b) the welfare of the detainee.
27	Division 5—End of detention
28	13 End of detention
29	A detainee must be released from detention:

2	(a) as soon as an authorised officer or detention officer knows or reasonably believes that the detainee is an Australian citizen
3	or an Australian resident; or
4 5	(b) at the time the detainee is brought before a magistrate following a decision to charge the detainee with an offence
6	referred to in subclause 8(1); or
7	(c) at the time a decision is made not to charge the detainee with
8	an offence referred to in that subclause; or
9	(d) at the end of 168 hours after the detention began;
10	whichever occurs first.
11	Division 6—Offence of escaping from detention
12	14 Escape from detention
13	(1) A person commits an offence if:
14	(a) the person is in detention; and
15	(b) the person escapes from that detention.
16 17	(2) The offence is punishable on conviction by imprisonment for up to 2 years.
18	Part 3—Searching and screening detainees and
18 19	Part 3—Searching and screening detainees and screening their visitors
19	screening their visitors
19 20	screening their visitors Division 1—Searches of detainees
19 20 21	screening their visitors Division 1—Searches of detainees 15 Searches of detainees
19 20 21 22	screening their visitors Division 1—Searches of detainees 15 Searches of detainees (1) For the purposes set out in subclause (2), a detainee, and the
19 20 21 22 23	screening their visitors Division 1—Searches of detainees 15 Searches of detainees (1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched. (2) The purposes for which a detainee, and the detainee's clothing and
19 20 21 22 23 24 25 26	screening their visitors Division 1—Searches of detainees 15 Searches of detainees (1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched. (2) The purposes for which a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may be
19 20 21 22 23 24 25 26 27	Screening their visitors Division 1—Searches of detainees 15 Searches of detainees (1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched. (2) The purposes for which a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may be searched under this clause are as follows:
19 20 21 22 23 24 25 26 27 28	Screening their visitors Division 1—Searches of detainees 15 Searches of detainees (1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched. (2) The purposes for which a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may be searched under this clause are as follows: (a) to find out whether there is hidden on the detainee's person,
19 20 21 22 23 24 25 26 27 28 29	Screening their visitors Division 1—Searches of detainees 15 Searches of detainees (1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched. (2) The purposes for which a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may be searched under this clause are as follows: (a) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a weapon or other thing
19 20 21 22 23 24 25 26 27 28	Screening their visitors Division 1—Searches of detainees 15 Searches of detainees (1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched. (2) The purposes for which a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may be searched under this clause are as follows: (a) to find out whether there is hidden on the detainee's person,

1	(b) to find out whether there is hidden on the detainee's person,
2	in the clothing or in the property, a document or other thing
3	that is, or may be, evidence of:
4	(i) an offence against this Act or the regulations; or
5	(ii) an offence against section 6 of the Crimes Act 1914
6	relating to an offence described in subparagraph (i).
7	(3) If, in the course of a search under this clause, a weapon or other
8	thing referred to in paragraph (2)(a), or a document or other thing
9	referred to in paragraph (2)(b), is found, an approved officer:
10	(a) may take possession of the weapon, document or other thing;
11	and
12	(b) may retain the weapon, document or other thing for such time
13	as he or she thinks necessary for the purposes of this Act or
14	the Migration Act 1958.
15	(4) This clause does not authorise an approved officer, or another
16	person conducting a search pursuant to subclause (5), to remove
17	any of the detainee's clothing, or to require a detainee to remove
18	any of his or her clothing.
19	(5) A search under this clause of a detainee, and the detainee's
20	clothing, must be conducted by:
21	(a) an approved officer of the same sex as the detainee; or
22	(b) in a case where an approved officer of the same sex as the
23	detainee is not available to conduct the search—any other
24	person who is of the same sex and:
25	(i) is requested by an approved officer; and
26	(ii) agrees;
27	to conduct the search.
28	(6) An action or proceeding, whether civil or criminal, does not lie
29	against a person who, at the request of an approved officer,
30	conducts a search under this clause if the person acts in good faith
31	and does not contravene subclause (7).
32	(7) An approved officer or other person who conducts a search under
33	this clause must not use more force, or subject a detainee to greater
34	indignity, than is reasonably necessary in order to conduct the
35	search.

1	(8)	To avoid doubt, a search of a detainee may be conducted under this
2		clause irrespective of whether a screening procedure is conducted
3		in relation to the detainee under clause 16 or a strip search of the
4		detainee is conducted under clause 17.
5 6		Note: This clause corresponds closely to section 252 of the <i>Migration Act</i> 1958.
7	Division	2—Screening of detainees
8	16 Power	to conduct a screening procedure
9	(1)	A screening procedure in relation to a detainee, other than a
0		detainee to whom clause 23 applies, may be conducted by an
1		approved officer, without warrant, to find out whether there is
12		hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:
4		(a) to inflict bodily injury; or
15		(b) to help the detainee, or any other detainee, to escape from
16		detention.
17	(2)	An approved officer who conducts a screening procedure under
8		this clause must not use greater force, or subject the detainee to
9		greater indignity, than is reasonably necessary in order to conduct
20		the screening procedure.
21	(3)	This clause does not authorise an approved officer to remove any
22		of the detainee's clothing, or to require a detainee to remove any of
23		his or her clothing.
24	(4)	To avoid doubt, a screening procedure may be conducted in
25		relation to a detainee under this clause irrespective of whether a
26		search of the detainee is conducted under clause 15 or 17.
27	(5)	In this clause:
28		conducting a screening procedure, in relation to a detainee,
29		means:
80		(a) causing the detainee to walk, or to be moved, through
31		screening equipment; or
32		(b) passing hand-held screening equipment over or around the
33		detainee or around things in the detainee's possession; or

1 2	(c) passing things in the detainee's possession through screening equipment or examining such things by X-ray.
3 4	screening equipment means a metal detector or similar device for detecting objects or particular substances.
5 6	Note: This clause corresponds closely to section 252AA of the <i>Migration Act 1958</i> .
7	Division 3—Strip searches of detainees
8	17 Power to conduct a strip search
9	(1) A strip search of a detainee, other than a detainee to whom
10	clause 23 applies, may be conducted by an approved officer,
11	without warrant, to find out whether there is hidden on the
12	detainee, in his or her clothing or in a thing in his or her possession
13	a weapon, or other thing, capable of being used:
14	(a) to inflict bodily injury; or
15	(b) to help the detainee, or any other detainee, to escape from
16	detention.
17	Note: Clause 18 sets out rules for conducting a strip search under this clause.
18	(2) A <i>strip search</i> of a detainee means a search of the detainee, of his
19	or her clothing or of a thing in his or her possession. It may
20	include:
21	(a) requiring the detainee to remove some or all of his or her
22	clothing; and
23	(b) an examination of that clothing and of the detainee's body
24	(but not of the detainee's body cavities).
25	(3) A strip search of a detainee may be conducted by an approved
26	officer only if:
27	(a) an authorised officer or detention officer suspects on
28	reasonable grounds that there is hidden on the detainee, in his
29	or her clothing or in a thing in his or her possession a weapon
30	or other thing described in subclause (1); and
31	(b) the authorised officer, or detention officer, referred to in
32	paragraph (a) suspects on reasonable grounds that it is
33	necessary to conduct a strip search of the detainee to recover
34	that weapon or other thing; and
35	(c) the strip search is authorised as follows:

1 2 3 4 5 6 7 8 9	 (i) if the detainee is at least 18—the Secretary, the Director or an SES Band 3 employee in the Department (who is not the authorised officer referred to in paragraphs (a) and (b) nor the approved officer conducting the strip search), authorises the strip search because he or she is satisfied that there are reasonable grounds for those suspicions; (ii) if the detainee is at least 10 but under 18—a magistrate orders the strip search because he or she is satisfied that there are reasonable grounds for those suspicions.
11 12 13	(4) An authorised officer or detention officer may form a suspicion on reasonable grounds for the purposes of paragraph (3)(a) on the basis of:
14 15 16	 (a) a search conducted under clause 15 (whether by that authorised officer or detention officer or by another authorised officer or detention officer); or
17 18 19	 (b) a screening procedure conducted under clause 16 (whether by that authorised officer or detention officer or by another authorised officer or detention officer); or
20 21	(c) any other information that is available to the authorised officer or detention officer.
22 23 24	(5) An authorisation of a strip search given for the purposes of subparagraph (3)(c)(i):(a) may be given by telephone, fax or other electronic means;
25 26 27	and (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
28 29	(6) A record made under paragraph (5)(b) is not a legislative instrument.
30 31 32	(7) A failure to comply with paragraph (5)(b) does not affect the validity of a strip search conducted on the basis of that authorisation.
33 34	(8) The power to authorise a strip search under subparagraph (3)(c)(i) cannot be delegated to any other person.
35 36 37	(9) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.

1	(10)	The magistrate need not accept the power conferred.
2 3 4 5	(11)	A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.
6 7 8 9	(12)	To avoid doubt, a strip search of a detainee may be conducted under this clause irrespective of whether a search of the detainee is conducted under clause 15 or a screening procedure is conducted ir relation to the detainee under clause 16.
10	(13)	In this clause:
11 12 13 14		SES Band 3 employee means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.
15 16		Note: This clause corresponds closely to section 252A of the <i>Migration Act</i> 1958.
17	18 Rules f	or conducting a strip search
18	(1)	A strip search of a detainee under clause 17:
19 20		(a) must not subject the detainee to greater indignity than is reasonably necessary to conduct the strip search; and
21		(b) must be conducted in a private area; and
22 23		(c) must be conducted by an approved officer of the same sex as the detainee; and
24 25 26		(d) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person who is of the opposite sex to the detainee; and
27 28		(e) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the strip search; and
29		(f) must not be conducted on a detainee who is under 10; and
30		(g) if the detainee is at least 10 but under 18, or is incapable of
31 32		managing his or her affairs—must be conducted in the
33		presence of:
34		(i) the detainee's parent or guardian if that person is in
35 36		detention with the detainee and is readily available at the same place; or

1	(ii) if that is not acceptable to the detainee or
2	subparagraph (i) does not apply—another person (other
3	than an approved officer) who is capable of representing
4	the detainee's interests and who, as far as is practicable
5	in the circumstances, is acceptable to the detainee; and
6	(h) subject to subclause (4), if the detainee is at least 18, and is
7	not incapable of managing his or her affairs—must be
8	conducted in the presence of another person (if any)
9	nominated by the detainee, if that other person is readily
10	available at the same place as the detainee, and willing to
11	attend the strip search within a reasonable time; and
12	(i) must not involve a search of the detainee's body cavities; and
13	(j) must not involve the removal of more items of clothing, or
14	more visual inspection, than the approved officer conducting
15	the search believes on reasonable grounds to be necessary to
16	determine whether there is hidden on the detainee, in his or
17	her clothing or in a thing in his or her possession a weapon or
18	other thing described in subclause 17(1); and
19	(k) must not be conducted with greater force than is reasonably
20	necessary to conduct the strip search.
21	(2) Paragraphs (1)(d) and (e) do not apply to a parent or guardian, or
22	person present because of subparagraph (1)(g)(ii), if the detainee
23	has no objection to that person being present.
24	(3) Paragraphs (1)(d) and (e) do not apply to a person nominated by
25	the detainee under paragraph (1)(h) to attend the strip search.
26	(4) Neither:
27	(a) a detainee's refusal or failure to nominate a person under
28	paragraph (1)(h) within a reasonable time; nor
29	(b) a detainee's inability to nominate a person under that
30	paragraph who is readily available at the same place as the
31	detainee and willing to attend the strip search within a
32	reasonable time;
33	prevents a strip search being conducted.

1 2 3 4	(5) A strip search of a detainee may be conducted with the assistance of another person if the approved officer conducting the strip search considers that to be necessary for the purposes of conducting it. That person must not be of the opposite sex to the
5	detainee unless:
6	(a) the person is a medical practitioner; and
7 8	(b) a medical practitioner of the same sex as the detainee is not available within a reasonable time.
9	(6) An action or proceeding, whether civil or criminal, does not lie
10	against a person who, at the request of an approved officer, assists
11 12	in conducting a strip search if the person acts in good faith and does not contravene this clause.
13 14	(7) A detainee must be provided with adequate clothing if during or as a result of a strip search any of his or her clothing is:
15	(a) damaged or destroyed; or
16	(b) retained under clause 19.
17 18	Note: This clause corresponds closely to section 252B of the <i>Migration Act</i> 1958.
	Division 4—Keeping of things found by screening or strip search of detainees
20 21	
20 21 22	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing
20 21 22 23 24	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under
20 21 22 23 24	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing:
20 21 22 23 24 25 26	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing: (a) might provide evidence of the commission of an offence
20 21 22 23 24 25 26 27	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing: (a) might provide evidence of the commission of an offence against this Act or the regulations, or an offence against
220 221 222 23 24 225 226 227 228	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing: (a) might provide evidence of the commission of an offence against this Act or the regulations, or an offence against section 6 of the <i>Crimes Act 1914</i> relating to such an offence;
20 21 22 23 24 25 26 27 28 29	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing: (a) might provide evidence of the commission of an offence against this Act or the regulations, or an offence against section 6 of the <i>Crimes Act 1914</i> relating to such an offence; or
20 21 22 23 24 25 26 27 28 29	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing: (a) might provide evidence of the commission of an offence against this Act or the regulations, or an offence against section 6 of the <i>Crimes Act 1914</i> relating to such an offence;
20 21 22 23 24 25 26 27 28 29	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing: (a) might provide evidence of the commission of an offence against this Act or the regulations, or an offence against section 6 of the <i>Crimes Act 1914</i> relating to such an offence; or
20 21 22 23 24 25 26 27 28 29 30	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing: (a) might provide evidence of the commission of an offence against this Act or the regulations, or an offence against section 6 of the <i>Crimes Act 1914</i> relating to such an offence; or (b) is forfeited or forfeitable to the Commonwealth.
20 21 22 23 24 25 26 27 28 29 30 31 32	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing: (a) might provide evidence of the commission of an offence against this Act or the regulations, or an offence against section 6 of the <i>Crimes Act 1914</i> relating to such an offence; or (b) is forfeited or forfeitable to the Commonwealth. (2) A weapon or other thing described in subclause 16(1) or 17(1) that is found in the course of conducting a screening procedure under clause 16 or a strip search under clause 17 is forfeited to the
19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34	search of detainees 19 Possession and retention of certain things obtained during a screening procedure or strip search (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing: (a) might provide evidence of the commission of an offence against this Act or the regulations, or an offence against section 6 of the <i>Crimes Act 1914</i> relating to such an offence; or (b) is forfeited or forfeitable to the Commonwealth. (2) A weapon or other thing described in subclause 16(1) or 17(1) that is found in the course of conducting a screening procedure under

1 2 3 4 5	(3) An approved officer must not return a thing that is forfeited or forfeitable to the Commonwealth. Instead, the approved officer must, as soon as practicable, give a thing that is forfeited under subclause (2) to a constable (within the meaning of the <i>Crimes Act</i> 1914).
6 7	Note: See sections 450 and 451 of this Act, which deal with court-ordered forfeiture and how forfeited items are to be dealt with.
8	(4) An approved officer must take reasonable steps to return anything
9	that is not forfeited or forfeitable but is retained under
10	subclause (1) to the person from whom it was taken, or to the
11 12	owner if that person is not entitled to possess it, if one of the following happens:
13	(a) it is decided that the thing is not to be used in evidence;
14	(b) the period of 60 days after the approved officer takes
15	possession of the thing ends.
16	(5) However, the approved officer does not have to take those steps if:
17	(a) in a paragraph (4)(b) case:
18	(i) proceedings in respect of which the thing might provide
19	evidence have been instituted before the end of the 60
20	day period and have not been completed (including an
21	appeal to a court in relation to those proceedings); or
22 23	(ii) the approved officer may retain the thing because of an order under clause 21; or
24	(b) in any case—the approved officer is otherwise authorised (by
25	a law, or an order of a court or a tribunal, of the
26	Commonwealth or a State or Territory) to retain, destroy or
27	dispose of the thing.
28 29	Note: This clause corresponds closely to section 252C of the <i>Migration Act</i> 1958.
30	20 Approved officer may apply for a thing to be retained for a
31	further period
32	(1) This clause applies if an approved officer has taken possession of a
33	thing referred to in subclause 19(4) and proceedings in respect of
34	which the thing might provide evidence have not commenced
35	before the end of:
36	(a) 60 days after the approved officer takes possession of the
37	thing; or

1 2		(b) a period previously specified in an order of a magistrate under clause 21.
3 4	(2)	The approved officer may apply to a magistrate for an order that the approved officer may retain the thing for a further period.
5	(3)	Before making the application, the approved officer must:
6		(a) take reasonable steps to discover which persons' interests
7		would be affected by the retention of the thing; and
8		(b) if it is practicable to do so, notify each person who the
9 10		approved officer believes to be such a person of the proposed application.
11	(4)	A notice under paragraph (3)(b) is not a legislative instrument.
12 13		Note: This clause corresponds closely to section 252D of the <i>Migration Act</i> 1958.
14	21 Magist	rate may order that thing be retained
15	(1)	The magistrate may order that the approved officer who made an
16		application under clause 20 may retain the thing if the magistrate is
17		satisfied that it is necessary for the approved officer to do so:
18 19		(a) for the purposes of an investigation as to whether an offence has been committed; or
20		(b) to enable evidence of an offence to be secured for the
21		purposes of a prosecution.
22	(2)	The order must specify the period for which the approved officer
23		may retain the thing.
24	(3)	A power conferred on a magistrate by this clause is conferred on
25		the magistrate in a personal capacity and not as a court or a
26		member of a court.
27	(4)	The magistrate need not accept the power conferred.
28	(5)	A magistrate exercising a power under this clause has the same
29		protection and immunity as if he or she were exercising that power
30		as, or as a member of, the court of which the magistrate is a
31		member.
32 33		Note: This clause corresponds closely to section 252E of the <i>Migration Act</i> 1958.

Division 5—Screening detainees' visitors

2	22 Powers concerning entry to premises where detainee is detained
3 4 5	(1) An authorised officer or detention officer may request that a person about to enter premises where a detainee is in detention do one or more of the following:
6	(a) walk through screening equipment;
7	(b) allow an authorised officer or detention officer to pass
8	hand-held screening equipment over or around the person or
9	around things in the person's possession;
10 11	(c) allow things in the person's possession to pass through screening equipment or to be examined by X-ray.
12	(2) <i>Screening equipment</i> means a metal detector or similar device for
13	detecting objects or particular substances.
14	(3) If an approved officer suspects on reasonable grounds that a persor
15	about to enter premises where a detainee is in detention has in the
16	person's possession a thing that might:
17	(a) endanger the safety of the detainees, staff or other persons on
18	the premises; or
19	(b) disrupt the order or security arrangements on the premises;
20	the approved officer may request that the person do some or all of
21	the things in subclause (4) for the purpose of finding out whether
22	the person has such a thing. A request may be made whether or not
23	a request is also made to the person under subclause (1).
24	(4) An approved officer may request that the person do one or more of
25	the following:
26	(a) allow the approved officer to inspect the things in the
27	person's possession;
28	(b) remove some or all of the person's outer clothing such as a
29	coat, jacket or similar item;
30	(c) remove items from the pockets of the person's clothing;
31	(d) open a thing in the person's possession, or remove the thing's
32	contents, to allow the approved officer to inspect the thing or
33	its contents;
34	(e) leave a thing in the person's possession, or some or all of its
35	contents, in a place specified by the approved officer if he or

1 2		contents are capable of concealing something that might:
3		(i) endanger the safety of the detainees, staff or other
4		persons on the premises; or
5		(ii) disrupt the order or security arrangements on the
6		premises.
7	(5)	A person who leaves a thing (including any of its contents) in a
8	(3)	place specified by an approved officer is entitled to its return when
9		the person leaves the premises.
0	(6)	However, if possession of the thing, or any of those contents, by
10 11	(0)	the person is unlawful under a Commonwealth, State or Territory
12		law applying to the premises:
3		(a) the thing or the contents must not be returned to the person;
4		and
15		(b) an approved officer must, as soon as practicable, give the
6		thing or the contents to a constable (within the meaning of
17		the Crimes Act 1914).
18	(7)	A person who is about to enter premises where a detainee is
9	(,)	detained may be refused entry if the person does not comply with a
20		request under this clause.
21		Note: This clause corresponds closely to section 252G of the <i>Migration Act</i>
22		1958.
23	Division (6—Law applying to detainee in State or Territory
	Division	prison etc.
24		prison etc.
25	23 Detain	ees held in State or Territory prisons or remand centres
26	(1)	This clause applies to a detainee if:
27	(1)	(a) the detainee is held in detention in a prison or remand centre
28		of a State or Territory; and
29		(b) a law of that State or Territory confers a power to search
80		persons, or things in the possession of persons, serving
31		sentences or being held in the prison or remand centre.
32	(2)	To the extent that the State or Territory law confers that power, or
33	(2)	affects the exercise of that power, it applies to the detainee as
34		though it were a law of the Commonwealth.
		-

1 2	(3)	Clauses applies.	16 and 17 do not apply to a detainee to whom this clause
3 4		Note:	This clause corresponds closely to section 252F of the <i>Migration Act</i> 1958.
5	Part 4		inees' rights to facilities for obtaining advice etc.
6 7		icgai	auvice cic.
8	24 Detain	ee may	have access to certain advice, facilities etc.
9 10 11		him or h	son responsible for detention of a detainee must afford to her all reasonable facilities for obtaining legal advice or legal proceedings in relation to his or her detention.
12		Note:	This clause corresponds to section 256 of the Migration Act 1958.
13	Part 5—	-Ident	tifying detainees
14	Division	1—Pre	eliminary
15	25 Definit	ions	
16		In this P	Part, unless the contrary intention appears:
17 18			cation test means a test carried out in order to obtain a lidentifier.
19 20 21		understa	<i>le person</i> means a person who is incapable of anding the general nature and effect of, and purposes of, a ment to provide a personal identifier.
22 23		_	dent person means a person (other than an authorised detention officer or approved officer) who:
24		(a) is	capable of representing the interests of a non-citizen who is
25		_	oviding, or is to provide, a personal identifier; and
26 27			far as practicable, is acceptable to the non-citizen who is oviding, or is to provide, the personal identifier; and
28		(c) if	the non-citizen is a minor—is capable of representing the
29		m	inor's best interests.
30		<i>minor</i> n	neans a person who is less than 18 years old.

1	non-citizen means a person who is not an Australian citizen.	
2	personal identifier has the meaning given by clause 26.	
3 4 5	Note: The definitions of expressions in this clause correspond closely to definitions of those expressions in section 5 of the <i>Migration Act</i> 1958.	
6	26 Meaning of personal identifier	
7	(1) In this Part:	
8 9	<i>personal identifier</i> means any of the following (including any the following in digital form):	of
10 11	(a) fingerprints or handprints of a person (including those tall using paper and ink or digital livescanning technologies);	
12	(b) a measurement of a person's height and weight;	,
13	(c) a photograph or other image of a person's face and should	
14 15	(d) an audio or a video recording of a person (other than a video recording under clause 37);	deo
16	(e) an iris scan;	
17	(f) a person's signature;	
18	(g) any other identifier prescribed by the regulations, other th	ıan
19	an identifier the obtaining of which would involve the	
20 21	carrying out of an intimate forensic procedure within the meaning of section 23WA of the <i>Crimes Act 1914</i> .	
22	(2) Before the Governor-General makes regulations for the purpos	es of
23	paragraph (g) of the definition of personal identifier in	
24	subclause (1) prescribing an identifier, the Minister must be	
25	satisfied that:	
26	(a) obtaining the identifier would not involve the carrying ou	it of
27 28	an intimate forensic procedure within the meaning of section 23WA of the <i>Crimes Act 1914</i> ; and	
28 29	(b) the identifier is an image of, or a measurement or recordi	nα
30	of, an external part of the body; and	ng
31	(c) obtaining the identifier will promote one or more of the	
32	purposes referred to in subclause (3).	
33	(3) The purposes are:	
34	(a) to assist in the identification of, and to authenticate the	
35	identity of, any non-citizen who can be required under the	is
36	Schedule to provide a personal identifier; and	

1 2	(b)	to assist in identifying, in the future, any such non-citizen; and
3	(c)	to enhance the ability to identify non-citizens who have a
4		criminal history in matters relating to the environment; and
5 6	(d)	to combat document and identity fraud in matters relating to the environment; and
7	(e)	to complement anti-people smuggling measures; and
8 9	(f)	to inform the governments of foreign countries of the identity of non-citizens who have been detained under, or charged with offences against, this Act or the regulations; and
10	(g)	to facilitate international cooperation to combat activities that
11 12 13	(g)	involve a breach of the laws of Australia or of a foreign country.
	37 .	•
14 15	Note:	This clause corresponds closely to section 5A of the <i>Migration Act</i> 1958.
16	27 Limiting the	e types of identification tests that approved officers
17	_	carry out
18	(1) The 9	Secretary may, in an instrument authorising an authorised
19		er or detention officer as an approved officer for the purposes
20		rrying out identification tests under this Part, specify the types
21		entification tests that the approved officer may carry out.
22		an approved officer is not an approved officer in relation to
23	carry	ing out an identification test that is not of a type so specified.
24 25	Note:	This clause corresponds closely to section 5D of the <i>Migration Act</i> 1958.
26	Division 2—I	dentification of detainees
27	Subdivision A-	—Provision of personal identifiers
28	28 Detainees m	ust provide personal identifiers
26	20 Detainees in	ust provide personal identifiers
29		n-citizen in detention must (other than in the prescribed
30		mstances) provide to an approved officer one or more
31	perso	onal identifiers.
32 33	Note:	A person who is an Australian citizen, or is a non-citizen but an Australian resident, may be in detention but must be released as soon

1 2		detention officer knows or reasonably australian citizen or resident. See clause 13.
3	· / 11	equire, for the purposes of vide a personal identifier other than
5	any of the following (including	
6	form):	
7		of the detainee (including those
8 9		or digital livescanning
10	(b) a measurement of the deta	ainee's height and weight;
11 12	1 11	age of the detainee's face and
13	(1) 1 1 1 1	
14 15	(e) any other personal identif	ier of a type prescribed for the h.
16 17	Note: Division 3 sets out further	restrictions on the personal identifiers that ons can be required to provide.
18	(3) The one or more personal ident	ifiers are to be provided by way of
19	one or more identification tests	carried out by the approved officer
20	in accordance with this Division	n.
21 22		ons, clause 32 allows reasonable force to be ation tests under this Division.
23 24	1	osely to section 261AA of the Migration
25	29 Approved officers must require an	d carry out identification tests
26 27	11 10 1	
28	(a) require the non-citizen to	provide one or more personal
29	· · · · · · · · · · · · · · · · · · ·	types prescribed, by way of one or
30	more identification tests of	carried out by the approved officer;
31		
32	· / •	identification tests on the
33	non-citizen.	
34	(2) However:	
35	· ·	on tests that the approved officer
36		
37		e of a type so specified; and

2	'	with Subdivision B; and
3		(c) unless the approved officer has reasonable grounds to believe
4		that the non-citizen is not a minor or an incapable person—
5		each identification test must be carried out in accordance
6		with the additional requirements of Division 3.
7 8	No	ote: Subclauses (1) and (2) correspond closely to section 261AB of the <i>Migration Act 1958</i> .
9	(3) If	:
10		(a) the approved officer is authorised because of clause 7 (which
11		effectively treats as approved officers for the purposes of
12		certain provisions of this Schedule certain persons who are
13 14		authorised Migration Act officers for the purposes of certain provisions of the <i>Migration Act 1958</i>); and
		(b) an instrument under section 5D of that Act specifies the types
15 16	'	of identification test the authorised Migration Act officer
17		may carry out;
18	ns	aragraph (2)(a) of this clause has effect as if the specified types
19		except any specified under subclause 7(3) in relation to the
20	·	athorised Migration Act officer) had been specified under
21		ause 27.
22	30 Informat	ion to be provided before carrying out identification
22 23		ion to be provided before carrying out identification ests
	te	- · · · · · · · · · · · · · · · · · · ·
23	(1) Be	ests
23 24	(1) Bo	ests efore carrying out an identification test, the approved officer sust: (a) inform the non-citizen that the non-citizen may ask that an
23 24 25 26 27	(1) Bo	ests efore carrying out an identification test, the approved officer tust: (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is
23 24 25 26 27 28	(1) Bo	efore carrying out an identification test, the approved officer nust: (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the
23 24 25 26 27	(1) Bom	efore carrying out an identification test, the approved officer sust: (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and
23 24 25 26 27 28	(1) Bom	efore carrying out an identification test, the approved officer ust: (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and (b) inform the non-citizen of such other matters as are specified
23 24 25 26 27 28 29	(1) Bom	efore carrying out an identification test, the approved officer sust: (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and
23 24 25 26 27 28 29 30	(1) Bo m	efore carrying out an identification test, the approved officer nust: (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and (b) inform the non-citizen of such other matters as are specified in the regulations. Or the purposes of subclause (1), the approved officer <i>informs</i> the
23 24 25 26 27 28 29 30 31 32 33	(1) Bom (2) For no	efore carrying out an identification test, the approved officer nust: (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and (b) inform the non-citizen of such other matters as are specified in the regulations. Or the purposes of subclause (1), the approved officer <i>informs</i> the on-citizen of a matter if the approved officer informs the
23 24 25 26 27 28 29 30 31 32 33 34	(2) For no	efore carrying out an identification test, the approved officer nust: (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and (b) inform the non-citizen of such other matters as are specified in the regulations. or the purposes of subclause (1), the approved officer <i>informs</i> the on-citizen of a matter if the approved officer informs the on-citizen of the matter, through an interpreter if necessary, in a
23 24 25 26 27 28 29 30 31 32 33 34 35	(2) For no la	efore carrying out an identification test, the approved officer nust: (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and (b) inform the non-citizen of such other matters as are specified in the regulations. Or the purposes of subclause (1), the approved officer <i>informs</i> the on-citizen of a matter if the approved officer informs the on-citizen of the matter, through an interpreter if necessary, in a nguage (including sign language or braille) in which the
23 24 25 26 27 28 29 30 31 32 33 34	(2) For no la	efore carrying out an identification test, the approved officer nust: (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and (b) inform the non-citizen of such other matters as are specified in the regulations. or the purposes of subclause (1), the approved officer <i>informs</i> the on-citizen of a matter if the approved officer informs the on-citizen of the matter, through an interpreter if necessary, in a

1 2 3 4 5	r t i	non-c he in nfori	approved officer may comply with this clause by giving to the citizen, in accordance with the regulations, a form setting out a formation specified in the regulations. However, the mation must be in a language (including braille) in which the citizen is able to communicate with reasonable fluency.
6	(4) A	A for	m mentioned in subclause (3) is not a legislative instrument.
7 8	1	Note:	This clause corresponds closely to section 261AC of the <i>Migration Act 1958</i> .
9	Subdivision	n B-	—How identification tests are carried out
10	31 General	rule	es for carrying out identification tests
11	A	An id	entification test under this Division:
12 13		(a)	must be carried out in circumstances affording reasonable privacy to the non-citizen; and
14 15 16 17		(b)	if the non-citizen so requests and it is practicable to comply with the request—must not be carried out in the presence or view of a person who is of the opposite sex to the non-citizen; and
18 19 20 21		(c)	must not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the identification test or is not required or permitted by another provision of this Schedule; and
22 23		(d)	must not involve the removal of more clothing than is necessary for carrying out the test; and
24 25		(e)	must not involve more visual inspection than is necessary for carrying out the test; and
26 27 28		(f)	if the test is one of 2 or more identification tests to be carried out on the non-citizen—must be carried out at the same time as the other identification tests, if it is practicable to do so.
29	N	Jote:	· · · · · · · · · · · · · · · · · · ·

Act 1958.

32 Use of force in carrying out identification tests

2	When use of force is permitted
3 4 5	(1) Subject to subclause (2) and clause 33, an approved officer, or a person authorised under clause 34 to help the approved officer, may use reasonable force:
	(a) to enable the identification test to be carried out; or
6	(a) to enable the identification test to be earned out, of (b) to prevent the loss, destruction or contamination of any
7 8 9	personal identifier or any meaningful identifier derived from the personal identifier.
10	However, this clause does not authorise the use of force against a
11	minor or an incapable person, or if the personal identifier in
12	question is a person's signature.
13	(2) The approved officer or person must not use force unless:
14	(a) the non-citizen required to provide the personal identifier in
15	question has refused to allow the identification test to be
16	carried out; and
17	(b) all reasonable measures to carry out the identification test
18	without the use of force have been exhausted; and
19	(c) the use of force in carrying out the identification test is
20	authorised under subclause (4).
21	Applications for authorisation to use force
22	(3) An approved officer may apply to a senior authorising officer (who
23	is not an approved officer referred to in subclause (1)) for an
24	authorisation to use force in carrying out the identification test.
25	Authorisation to use force
26	(4) The senior authorising officer may authorise the use of force in
27	carrying out the identification test if he or she is reasonably
28	satisfied that:
29	(a) the non-citizen required to provide the personal identifier in
30	question has refused to allow the identification test to be
31	carried out; and
32	(b) all reasonable measures to carry out the identification test
33	without the use of force have been exhausted.
34	(5) An authorisation under subclause (4):

1 2		(a) may be given by telephone, fax or other electronic means; and
3 4		(b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
5	(6)	A record made under paragraph (5)(b) is not a legislative instrument.
Ü		
7	(7)	A failure to comply with paragraph (5)(b) does not affect the
8 9		validity of an identification test carried out on the basis of that authorisation.
10	(8)	The power to give an authorisation under subclause (4) cannot be delegated to any other person.
12		Definition
13	(9)	In this clause:
4		senior authorising officer means an authorised officer, or
15		detention officer, whom the Secretary has authorised, or who is
6		included in a class of authorised officers or detention officers
17 18		whom the Secretary has authorised, to perform the functions of a senior authorising officer under this clause.
19 20		Note: This clause corresponds closely to section 261AE of the <i>Migration Act</i> 1958.
21 22	33 Identif	ication tests not to be carried out in cruel, inhuman or degrading manner etc.
23		For the purposes of this Schedule, the carrying out of the
24		identification test is not of itself taken:
25		(a) to be cruel, inhuman or degrading; or
26		(b) to be a failure to treat a person with humanity and with
27		respect for human dignity.
28		However, nothing in this Schedule authorises the carrying out of
29		the identification test in a cruel, inhuman or degrading manner, or in a manner that fails to treat a person with humanity and with
30 31		respect for human dignity.
32 33		Note: This clause corresponds closely to section 261AF of the <i>Migration Act</i> 1958.

1	34 A	pproved officer may get help to carry out identification tests
2		An approved officer may ask another approved officer or an
3		authorised officer or detention officer to help him or her to carry
4		out the identification test, and the other person may give that help.
5 6		Note: This clause corresponds closely to section 261AG of the <i>Migration Act 1958</i> .
7	35 Id	lentification tests to be carried out by approved officer of same
8		sex as non-citizen
9		If the non-citizen requests that the identification test be carried out
10		by an approved officer of the same sex as the non-citizen, the test
11 12		must only be carried out by an approved officer of the same sex as the non-citizen.
13 14		Note: This clause corresponds closely to section 261AH of the <i>Migration Act 1958</i> .
15	36 In	dependent person to be present
16 17		The identification test must be carried out in the presence of an independent person if:
18		(a) force is used in carrying out the identification test; or
19		(b) both of the following apply:
20		(i) the non-citizen requests that an independent person be
21 22		present while the identification test is being carried out; (ii) an independent person is readily available at the same
23 24		place as the non-citizen and is willing to attend the test within a reasonable time.
25 26		Note: This clause corresponds closely to section 261AI of the <i>Migration Act</i> 1958.
27	37 R	ecording of identification tests
28		(1) An approved officer may video record the carrying out of the
29		identification test.
30		(2) If the carrying out of the identification test is not video recorded,
31 32		the approved officer may decide that the identification test must be carried out in the presence of an independent person.
32 33 34		Note: This clause corresponds closely to section 261AJ of the <i>Migration Act</i> 1958.

38 Retesting

2	When retesting is permitted
3	(1) If:
4	(a) an approved officer has carried out an identification test (the
5	earlier test) on a non-citizen in accordance with this Division
6	(including a test authorised under subclause (4)); and
7	(b) either:
8	(i) a personal identifier that is provided as a result of the
9	earlier test being carried out is unusable; or
10	(ii) an approved officer, authorised officer or detention
1	officer is not satisfied about the integrity of that
2	personal identifier;
13	the approved officer who carried out the earlier test or another
4	approved officer may require the non-citizen to provide the
15	personal identifier again, and may carry out the test again in
16	accordance with this Division, if:
17	(c) the requirement is made while the earlier test is being carried
18	out or immediately after it was carried out; or
19	(d) carrying out the test again is authorised under subclause (4).
20	(2) If the non-citizen is required under subclause (1) to provide the
21	personal identifier again, the non-citizen is taken, for the purposes
22	of this Division, not to have provided the personal identifier as a
23	result of the earlier test being carried out.
24	Applications for authorisation to retest
25	(3) An approved officer may apply for an authorisation to carry out the
26	test again. The application is to be made to:
27	(a) if the earlier test was not a test authorised under
28	subclause (4)—a senior authorising officer (who is not an
29	approved officer, authorised officer or detention officer
80	referred to in subclause (1)); or
31	(b) if the earlier test was a test authorised under subclause (4) by
32	a senior authorising officer—the Secretary, the Director or an
33	SES Band 3 employee in the Department (who is not an
34	approved officer, authorised officer or detention officer
35	referred to in subclause (1)).

1		Authorisation to retest
2 3 4	(4)	The senior authorising officer, Secretary, Director or SES Band 3 employee (as the case requires) may authorise the test to be carried out again if:
5		(a) he or she is reasonably satisfied that the personal identifier that is provided as a result of the earlier test being carried out
7		is unusable; or
8 9		(b) he or she is not reasonably satisfied about the integrity of that personal identifier.
10	(5)	An authorisation under subclause (4):
1 2		(a) may be given by telephone, fax or other electronic means; and
13		(b) must be recorded in writing, and signed by the person giving
4		the authorisation, within one business day after it is given.
15	(6)	A record made under paragraph (5)(b) is not a legislative
16		instrument.
17	(7)	A failure to comply with paragraph (5)(b) does not affect the
8		validity of an identification test carried out on the basis of that authorisation.
19		authorisation.
20	(8)	The power to give an authorisation under subclause (4) cannot be
21		delegated to any other person.
22		Use of force
23	(9)	An authorisation under subclause (4) does not authorise the use of
24		force in carrying out an identification test.
25		Note: See clause 32 on the use of force in carrying out identification tests.
26		Effect of refusing to authorise retesting
27	(10)	If an application for an authorisation to carry out an identification
28		test again on a non-citizen is refused, the non-citizen is taken, for
29 30		the purposes of this Schedule, to have complied with any requirement under this Schedule to provide the personal identifier
31		in question.
		*

1		Definitions
2	(11)	In this clause:
3 4		senior authorising officer means an authorised officer, or detention officer, who:
5		(a) has been authorised, or is included in a class of authorised
6		officers or detention officers who have been authorised, by
7 8		the Secretary to perform the functions of a senior authorising officer under this clause; and
9		(b) is not the Secretary or an SES Band 3 employee in the
10		Department.
1		SES Band 3 employee means an SES employee with a
12		classification of Senior Executive Band 3, and includes an SES
13 14		employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.
15 16		Note: This clause corresponds closely to section 261AK of the <i>Migration Act 1958</i> .
17	Subdivisi	n C—Obligations relating to video recordings of
8		identification tests
	39 Definit	ong
19	39 Demin	uns
20		In this Subdivision, unless the contrary intention appears:
21 22		permitted provision, of a video recording, has the meaning given by subclause 42(2).
23		provide, in relation to a video recording, includes provide access to
24		the recording.
25		related document means a document that contains information,
26		derived from a video recording made under clause 37 or from a
27		copy of such a recording, from which the identity of the individual
28 29		on whom the identification test in question was carried out is apparent or can reasonably be ascertained.
80		video recording means a video recording made under clause 37 or
31		a copy of such a recording, and includes a related document.
32 33		Note: This clause corresponds closely to section 261AKA of the <i>Migration Act 1958</i> .

1	40	Access	ing video	o recordings
2		(1)	A persor	n commits an offence if:
3			(a) the	e person accesses a video recording; and
4			(b) the	e person is not authorised under clause 41 to access the
5				leo recording for the purpose for which the person
6			acc	cessed it.
7			Penalty:	Imprisonment for 2 years.
8 9		(2)		use does not apply if the access is through the provision of recording that is a permitted provision.
10			Note 1:	A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the <i>Criminal Code</i>).
12			Note 2:	This clause corresponds closely to section 261AKB of the <i>Migration Act 1958</i> .
4	41	Author	rising ac	cess to video recordings
15		(1)	The Secr	retary may, in writing, authorise a specified person, or any
6			person in	ncluded in a specified class of persons, to access:
17			(a) all	video recordings; or
8			(b) a s	pecified video recording, or video recordings of a
19				ecified kind.
20		(2)		retary must specify in an authorisation under this clause, as
21				ose or purposes for which access is authorised, one or
22			more of	the following purposes:
23				oviding a video recording to another person in accordance
24			wit	th this Subdivision;
25			(b) adı	ministering or managing the storage of video recordings;
26				iking a video recording available to the person to whom it
27			rela	ates;
28			(d) mo	odifying related documents in order to correct errors or
29			ens	sure compliance with appropriate standards;
30			(e) any	y purpose connected with determining whether a civil or
31				minal liability has arisen from a person carrying out or
32				ping to carry out an identification test under this Schedule;
33				mplying with laws of the Commonwealth or the States or
34			Te:	rritories;

1 2 3 4	(g) disclosing personal information under clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
5	(3) However, the Secretary must not specify as a purpose for which
6	access is authorised a purpose that will include or involve the
7	purpose of:
8	(a) investigating an offence against a law of the Commonwealth
9 10	or a State or Territory (other than an offence involving whether an identification test was carried out lawfully); or
11	(b) prosecuting a person for such an offence;
12 13	if the identifying information in question relates to a personal identifier of a prescribed type.
14 15	Note: This clause corresponds closely to section 261AKC of the <i>Migration Act 1958</i> .
16	42 Providing video recordings
17	(1) A person commits an offence if:
18 19	 (a) the person's conduct causes a video recording to be provided to another person; and
20 21	(b) the provision of the recording is not a permitted provision of the recording.
22	Penalty: Imprisonment for 2 years.
23 24	(2) A <i>permitted provision</i> of a video recording is a provision of the recording that:
25	(a) is for the purpose of administering or managing the storage
26	of video recordings; or
27	(b) is for the purpose of making the video recording in question
28	available to the non-citizen to whom it relates; or
29	(c) is for the purpose of a proceeding, before a court or tribunal,
30 31	relating to the non-citizen to whom the video recording in question relates; or
32	(d) is for any purpose connected with determining whether a
33	civil or criminal liability has arisen from a person carrying
34 35	out or helping to carry out an identification test under this Schedule; or
	,

1 2 3	 (e) is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to carrying out an identification test; or
4 5	(f) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of
6	this Schedule relating to carrying out an identification test; or
7	(g) takes place with the written consent of the non-citizen to
8	whom the video recording in question relates; or
9	(h) is a disclosure authorised by clause 59 (about disclosure of
10	information about a person who has been in detention, for the
11 12	purposes of the immigration detention or removal of the person).
13 14	(3) However, a provision of a video recording is not a permitted provision of the recording if:
15 16	(a) it constitutes a disclosure of identifying information relating to a personal identifier of a prescribed type; and
17	(b) it is for the purpose of:
18	(i) investigating an offence against a law of the
19	Commonwealth or a State or Territory (other than an
20 21	offence involving whether an identification test was carried out lawfully); or
22	(ii) prosecuting a person for such an offence.
23 24	Note: This clause corresponds closely to section 261AKD of the <i>Migration Act 1958</i> .
25	43 Unauthorised modification of video recordings
26	A person commits an offence if:
27 28	 (a) the person causes any unauthorised modification of a video recording; and
29	(b) the person intends to cause the modification; and
30	(c) the person knows that the modification is unauthorised.
31	Penalty: Imprisonment for 2 years.
32	44 Unauthorised impairment of video recordings
33	A person commits an offence if:
34	(a) the person causes any unauthorised impairment of:
35	(i) the reliability of a video recording; or

1	(ii) the security of the storage of a video recording; or
2	(iii) the operation of a system by which a video recording is
3	stored; and
4	(b) the person intends to cause the impairment; and
5	(c) the person knows that the impairment is unauthorised.
6	Penalty: Imprisonment for 2 years.
7	45 Meanings of unauthorised modification and unauthorised
8	impairment etc.
9	(1) In this Subdivision:
10	(a) modification of a video recording; or
11	(b) impairment of the reliability of a video recording; or
12	(c) impairment of the security of the storage of a video
13	recording; or
14	(d) impairment of the operation of a system by which a video
15	recording is stored;
16	by a person is unauthorised if the person is not entitled to cause
17	that modification or impairment.
18	(2) Any such modification or impairment caused by the person is not
19	unauthorised merely because he or she has an ulterior purpose for
20	causing it.
21	(3) For the purposes of an offence under this Subdivision, a person
22	causes any such unauthorised modification or impairment if the
23	person's conduct substantially contributes to it.
24	(4) For the purposes of subclause (1), if:
25	(a) a person causes any modification or impairment of a kind
26	mentioned in that subclause; and
27	(b) the person does so under a warrant issued under the law of
28	the Commonwealth, a State or a Territory;
29	the person is entitled to cause that modification or impairment.
30 31	Note: This clause corresponds closely to section 261AKG of the <i>Migration Act 1958</i> .
32	46 Destroying video recordings
33	A person commits an offence if:

1 2	(a) the person is the person who has day-to-day responsibility for the system under which a video recording is stored; and
3	(b) the person fails physically to destroy the recording, and all
4	copies of the recording, within 10 years after it was made.
5	Penalty: Imprisonment for 2 years.
6	Division 3—Identification of minors and incapable persons
7	47 Minors
8	Minors less than 15 years old
9	(1) A non-citizen who is less than 15 years old must not be required
10	under this Schedule to provide a personal identifier other than a
11	personal identifier consisting of:
12	(a) a measurement of the non-citizen's height and weight; or
13	(b) the non-citizen's photograph or other image of the
14	non-citizen's face and shoulders.
15	Persons present while identification test is carried out
16	(2) If a non-citizen who is a minor provides a personal identifier, in
17	accordance with a requirement under this Schedule, by way of an
18	identification test carried out by an approved officer, the test must
19	be carried out in the presence of:
20	(a) a parent or guardian of the minor; or
21	(b) an independent person.
22	(3) However, if the Minister administering the <i>Immigration</i>
23	(Guardianship of Children) Act 1946 is the guardian of the minor,
24	the test must be carried out in the presence of an independent
25	person other than that Minister.
26 27	Note: This clause corresponds closely to subsections 261AL(1), (5) and (6) of the <i>Migration Act 1958</i> .

1	48 Incapable persons
2	Incapable persons
3	(1) A non-citizen who is an incapable person must not be required
4	under this Schedule to provide a personal identifier other than a
5	personal identifier consisting of:
6	(a) a measurement of the non-citizen's height and weight; or
7	(b) the non-citizen's photograph or other image of the
8	non-citizen's face and shoulders.
9	Persons present while identification test is carried out
10	(2) If a non-citizen who is an incapable person provides a personal
11	identifier, in accordance with a requirement under this Schedule,
12	by way of an identification test carried out by an approved officer,
13	the test must be carried out in the presence of:
14	(a) a parent or guardian of the incapable person; or
15	(b) an independent person.
16 17	Note: This clause corresponds closely to subsections 261AM(1) and (4) of the <i>Migration Act 1958</i> .
18	Division 4—Obligations relating to detainees' identifying
19	information
20	Subdivision A—Preliminary
21	49 Definitions
22	In this Division:
23	disclose, in relation to identifying information that is a personal
24	identifier, includes provide access to the personal identifier.
25	identifying information means the following:
26	(a) any personal identifier;
27	(b) any meaningful identifier derived from any personal
28	identifier;
29	(c) any record of a result of analysing any personal identifier or
30	any meaningful identifier derived from any personal
31	identifier;

1 2 3 4 5 6	(d) any other information, derived from any personal identifier, from any meaningful identifier derived from any personal identifier or from any record of a kind referred to in paragraph (c), that could be used to discover a particular person's identity or to get information about a particular person.
7 8	<i>permitted disclosure</i> has the meaning given by subclauses 53(2) and (3).
9	unauthorised impairment has the meaning given by clause 57.
10	unauthorised modification has the meaning given by clause 57.
11 12 13	Note: The definitions of expressions in this clause correspond closely to definitions of those expressions in section 336A of the <i>Migration Act</i> 1958.
14	50 Application
15	Section 15.4 of the Criminal Code (extended geographical
16	jurisdiction—category D) applies to all offences against this
17	Division.
18 19	Note: This clause corresponds closely to section 336B of the <i>Migration Act</i> 1958.
20	Subdivision B—Accessing identifying information
21	51 Accessing identifying information
22	(1) A person commits an offence if:
23	(a) the person accesses identifying information; and
24	(b) the person is not authorised under clause 52 to access the
25	identifying information for the purpose for which the person
26	accessed it.
27	Penalty: Imprisonment for 2 years.
28	(2) This clause does not apply if the access is through a disclosure that
29	is a permitted disclosure.
30 31	Note 1: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the <i>Criminal Code</i>).
32 33	Note 2: This clause corresponds closely to section 336C of the <i>Migration Act</i> 1958.

1	52 Authorising access to identifying information
2 3 4	(1) The Secretary may, in writing, authorise a specified person, or any person included in a specified class of persons, to access identifying information of the kind specified in the authorisation.
5	(2) The Secretary must specify in an authorisation under this clause, as
6 7	the purpose or purposes for which access is authorised, one or more of the following purposes:
8	(a) one or more of the purposes set out in subclause 26(3);
9	(b) disclosing identifying information in accordance with this
10	Division;
11 12	(c) administering or managing the storage of identifying information;
13 14	 (d) making identifying information available to the person to whom it relates;
15	(e) modifying identifying information to enable it to be matched with other identifying information;
16	
17 18	(f) modifying identifying information in order to correct errors or ensure compliance with appropriate standards;
19	(g) making decisions under this Act;
20 21	(h) complying with laws of the Commonwealth or the States or Territories;
22	(i) disclosing personal information under clause 59 (about
23	disclosure of information about a person who has been in
24	detention, for the purposes of the immigration detention or
25	removal of the person).
26	(3) However, the Secretary must not specify as a purpose for which
27	access is authorised a purpose that will include or involve the
28	purpose of:
29	(a) investigating an offence against a law of the Commonwealth
30	or a State or Territory; or
31	(b) prosecuting a person for such an offence;
32	if the identifying information in question relates to a personal
33	identifier of a prescribed type.
34 35	Note: This clause corresponds closely to section 336D of the <i>Migration Act</i> 1958.

Subdivision C—Disclosing identifying information

2	53 Disclosing id	lentifying information
3	(1) A per	rson commits an offence if:
4	(a)	the person's conduct causes disclosure of identifying
5		information; and
6	(b)	the disclosure is not a permitted disclosure.
7	Penal	ty: Imprisonment for 2 years.
8	(2) A <i>per</i>	rmitted disclosure is a disclosure that:
9	(a)	is for the purpose of data-matching in order to:
10		(i) identify, or authenticate the identity of, a non-citizen; or
11		(ii) facilitate the processing of non-citizens entering or
12		departing from Australia; or
13		(iii) identify non-citizens who have a criminal history, who
14		are of character concern (as defined in the Migration Act
15		1958) or who are of national security concern; or
16		(iv) combat document and identity fraud in immigration
17		matters; or
18		(v) ascertain whether an applicant for a protection visa had
19		sufficient opportunity to avail himself or herself of
20		protection before arriving in Australia; or
21		(vi) inform the governments of foreign countries of the
22		identity of non-citizens who are, or are to be, removed
23		from Australia; or
24	(b)	is for the purpose of administering or managing the storage
25		of identifying information; or
26	(c)	is authorised under clause 54 and is for the purpose, or one or
27		more of the purposes, for which the disclosure is authorised;
28	4.10	or
29	(d)	is for the purpose of making the identifying information in
30		question available to the non-citizen to whom it relates; or
31	(e)	takes place under an arrangement entered into with an agency
32		of the Commonwealth, or with a State or Territory or an
33		agency of a State or Territory, for the exchange of identifying
34		information; or

1 2	(f) is for the purpose of a proceeding, before a court or tribunal, relating to the non-citizen to whom the identifying
3	information in question relates; or
4	(g) is for the purpose of an investigation by the Privacy
5	Commissioner or the Ombudsman relating to:
6	(i) carrying out an identification test; or
7	(ii) requiring the provision of a personal identifier; or
8 9	(h) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of
10	this Schedule relating to:
11	(i) carrying out an identification test; or
12	(ii) requiring the provision of a personal identifier; or
13	(i) takes place with the written consent of the non-citizen to
14	whom the identifying information in question relates; or
15	(j) is a disclosure authorised by clause 59 (about disclosure of
16	information about a person who has been in detention, for the
17	purposes of the immigration detention or removal of the
18	person).
19	(3) However, a disclosure is not a permitted disclosure if:
20 21	(a) it is a disclosure of identifying information relating to a personal identifier of a prescribed type; and
22	(b) it is for the purpose of:
23	(i) investigating an offence against a law of the
24	Commonwealth or a State or Territory; or
25	(ii) prosecuting a person for such an offence.
26 27	Note: This clause corresponds closely to section 336E of the <i>Migration Act</i> 1958.
28 29	54 Authorising disclosure of identifying information to foreign countries etc.
20	(1) The Secretary may, in writing, authorise a specified authorised
30 31	officer or detention officer, any authorised officer or detention
32	officer included in a specified class of authorised officers or
33	detention officers, or an Agency (as defined in the <i>Public Service</i>
34	Act 1999) prescribed by the regulations, to disclose identifying
35	information of the kind specified in the authorisation to one or
36	more of the following:
37	(a) one or more specified foreign countries;

1	(b) one or more specified bodies each of which is:
2	(i) a police force or police service of a foreign country; or
3	(ii) a law enforcement body of a foreign country; or
4	(iii) a border control body of a foreign country;
5	(c) one or more specified international organisations, or
6	specified organisations of foreign countries, that are
7	responsible for matters relating to the environment;
8 9	(d) one or more prescribed bodies of a foreign country, of the Commonwealth or of a State or Territory;
10	(e) one or more prescribed international organisations.
11	(2) The Secretary must specify in the authorisation, as the purpose or
12	purposes for which disclosure is authorised, one or more of the
13	purposes set out in subclause 26(3).
14 15	Note: This clause corresponds closely to subsections 336F(1) and (2) of the <i>Migration Act 1958</i> .
16	Subdivision D—Modifying and impairing identifying
17	information
18	55 Unauthorised modification of identifying information
19	A person commits an offence if:
20 21	(a) the person causes any unauthorised modification of identifying information; and
22	(b) the person intends to cause the modification; and
23	(c) the person knows that the modification is unauthorised.
24	Penalty: Imprisonment for 2 years.
25	Note: This clause corresponds closely to section 336G of the <i>Migration Act</i>
26	1958.
27	56 Unauthorised impairment of identifying information
28	A person commits an offence if:
29	(a) the person causes any unauthorised impairment of:
30	(i) the reliability of identifying information; or
31	(ii) the security of the storage of identifying information; or
32	(iii) the operation of a system by which identifying
33	information is stored; and

	(b) the person intends to cause the impairment; and
	(c) the person knows that the impairment is unauthorised.
	Penalty: Imprisonment for 2 years.
	Note: This clause corresponds closely to section 336H of the <i>Migration Act</i> 1958.
57]	Meanings of unauthorised modification and unauthorised impairment etc.
	•
	(1) In this Division:
	(a) modification of identifying information; or
	(b) impairment of the reliability of identifying information; or(c) impairment of the security of the storage of identifying information; or
	(d) impairment of the operation of a system by which identifying
	information is stored;
	by a person is unauthorised if the person is not entitled to cause
	that modification or impairment.
	(2) Any such modification or impairment caused by the person is not
	unauthorised merely because he or she has an ulterior purpose for
	causing it.
	(3) For the purposes of an offence under this Division, a person causes
	any such unauthorised modification or impairment if the person's
	conduct substantially contributes to it.
	(4) For the purposes of subclause (1), if:
	(a) a person causes any modification or impairment of a kind
	mentioned in that subclause; and
	(b) the person does so under a warrant issued under the law of
	the Commonwealth, a State or a Territory;
	the person is entitled to cause that modification or impairment.
	Note: This clause corresponds closely to section 336J of the <i>Migration Act</i> 1958.
Sub	odivision E—Retaining identifying information
58	Identifying information may be indefinitely retained
	Identifying information may be indefinitely retained.

		Migration Act 1958, because under this Schedule identifying information will always be about someone who is or has been in detention.
Pa	art 6—	-Disclosure of detainees' personal information
59	Disclos	sure of detainees' personal information
	(1)	For the purposes described in subclause (2), an agency or organisation that is or has been responsible for the detention of an individual may disclose personal information about the individual to an agency, or organisation, that is or will be responsible for: (a) taking the individual into immigration detention; or (b) keeping the individual in immigration detention; or (c) causing the individual to be kept in immigration detention; or (d) the removal of the individual.
	(2)	The purposes are: (a) the immigration detention of the individual; and (b) the removal of the individual; and (c) the welfare of the individual while in immigration detention or being removed.
	(3)	In this clause:
		agency has the same meaning as in the Privacy Act 1988.
		immigration detention has the same meaning as in the Migration Act 1958.
		organisation has the same meaning as in the Privacy Act 1988.
		<i>personal information</i> has the same meaning as in the <i>Privacy Act</i> 1988.
		removal has the same meaning as in the Migration Act 1958.

Aus	tralian Heritage Council Act 2003
836	Subsection 3(1) (definition of Register)
	Repeal the definition.
837	After paragraph 5(c)
	Insert:
	(ca) to advise the Minister, in accordance with section 390P of the Environment Protection and Biodiversity Conservation Act
	1999, in relation to the inclusion of places in, and the
	removal of places from, the List of Overseas Places of Historic Significance to Australia;
838	Paragraph 5(f)
	Repeal the paragraph.
839	At the end of Part 4
	Add:
20A	Resolutions without meeting
	(1) The Council may pass a resolution without a Council meeting
	being held if a majority of the members entitled to vote on the resolution:
	(a) sign a document containing a statement that they are in
	favour of the resolution set out in the document; or
	(b) otherwise indicate, in accordance with a method determined
	by the Council, that they are in favour of the resolution.
	(2) For the purposes of paragraph (1)(a), separate copies of a
	document may be used for signing by the members if the wording of the resolution and statement is identical in each copy.
	(3) The resolution is passed when the last of the members signs the
	document or otherwise indicates that he or she is in favour of the
	resolution.

840	At the end of Part 5
	Add:
24A.	A No further changes to Register
	The Council must not:
	(a) include a place in the Register; or
	(b) remove a place, part of a place or heritage value of a place from the Register;
	on or after the commencement of this section.
841	Part 5
	Repeal the Part.
842	Paragraph 24A(2)(c)
	Omit ", Commonwealth Heritage List or Register of the National
	Estate", substitute "or Commonwealth Heritage List".
843	Paragraph 24A(2)(d)
	Omit ", Commonwealth Heritage List or Register of the National
	Estate", substitute "or Commonwealth Heritage List".
844	Paragraph 24A(2)(g)
	Omit ", Commonwealth Heritage List or Register of the National
	Estate", substitute "or Commonwealth Heritage List".
845	Paragraph 24A(2)(h)
	Omit ", Commonwealth Heritage List or Register of the National
	Estate", substitute "or Commonwealth Heritage List".
Env	ironment and Heritage Legislation Amendment Act
	(No. 1) 2003
846	Subitem 1A(2) of Schedule 3 (heading)
	Omit "within 6 months".
847	Subitem 1A(2) of Schedule 3
	Omit "within 6 months after this item commences"

1	Env	rironment Protection (Alligator Rivers Region) Act 1978
2 3	848	Subsection 3(1) (subparagraph (b)(iii) of the definition of prescribed instrument)
4		Omit "1976; and", substitute "1976.".
5 6	849	Subsection 3(1) (subparagraph (b)(iv) of the definition of prescribed instrument)
7		Repeal the subparagraph.
8	Env	vironment Protection (Northern Territory Supreme Court) Act 1978
10 11	850	Section 3 (subparagraph (b)(iii) of the definition of prescribed instrument)
12		Omit "1976; and", substitute "1976.".
13 14	851	Section 3 (subparagraph (b)(iv) of the definition of prescribed instrument)
15		Repeal the subparagraph.
16	Env	rironment Protection (Sea Dumping) Act 1981
17	852	Subsection 4(1) (definition of <i>Protocol</i>)
18		Repeal the definition, substitute:
19 20 21 22		Protocol means the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, done at London on 7 July 1996, as amended and in force for Australia from time to time.
23 24 25 26		Note: The English text of the Protocol is set out in Australian Treaty Series 2006 No. 11. In 2006, the text of a Protocol in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII Internet site (www.austlii.edu.au).
27	853	Schedule 1
28		Repeal the Schedule.
29	Mig	ration Act 1958

1	854	Subsection 5(1)
2		Insert:
3		environment detention offence means:
4 5 6		(a) an offence against the <i>Environment Protection and Biodiversity Conservation Act 1999</i> , or against regulations made for the purposes of that Act; or
7 8		(b) an offence against section 6 of the <i>Crimes Act 1914</i> relating to an offence described in paragraph (a).
9	855	Subsection 5(1)
10		Insert:
11 12 13 14		environment officer means an authorised officer, within the meaning of the Environment Protection and Biodiversity Conservation Act 1999, but does not include a person who is an authorised officer because of subsection 397(3) of that Act.
15	856	Subsection 5(1)
16		Insert:
17 18 19 20		foreign aircraft (environment matters) means an aircraft, within the meaning of the Environment Protection and Biodiversity Conservation Act 1999, that is not an Australian aircraft (within the meaning of that Act).
21	857	Subsection 5(1)
22		Insert:
23 24 25		vessel (environment matters) means a vessel, within the meaning of the Environment Protection and Biodiversity Conservation Act 1999.
26	858	At the end of subsection 43(3)
27		Add:
28		; or (c) an Australian resident entering Australia on a vessel
29		(environment matters) as a result of an environment officer,
30		or the person in command of a Commonwealth ship or a
31		Commonwealth aircraft:

1 2		(i) exercising his or her power under paragraph 403(3)(a) of the <i>Environment Protection and Biodiversity</i>
3		Conservation Act 1999 in relation to the vessel; or
4		(ii) making a requirement of the person in charge of the
5		vessel under paragraph 403(3)(b) of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> ;
6 7		because the environment officer, or person in command, had
8		reasonable grounds to suspect that the vessel had been used
9		or otherwise involved in the commission of an environment
10		detention offence.
11	859	Subsection 43(4)
12		Insert:
13 14		Commonwealth aircraft has the same meaning as in the Environment Protection and Biodiversity Conservation Act 1999.
1.5	860	Subsection 43(4)
15	800	• •
16		Insert:
17 18		Commonwealth ship has the same meaning as in the Environment Protection and Biodiversity Conservation Act 1999.
19	861	Section 164A
20		Insert:
21 22		Commonwealth aircraft has the same meaning as in the Environment Protection and Biodiversity Conservation Act 1999.
23	862	Section 164A
24		Insert:
25		Commonwealth ahin has the same maning as in the Faningary
25 26		Commonwealth ship has the same meaning as in the Environment Protection and Biodiversity Conservation Act 1999.
27	863	Section 164A
28		Insert:
29		enforcement visa (environment matters) means an enforcement
30		visa that is granted by section 164BA.
31	864	Section 164A

msert.	
•	ment visa (fisheries matters) means an enforcement visa ranted by section 164B.
865 Section 164	A
Insert:	
	ment detention means detention under Schedule 1 to the ment Protection and Biodiversity Conservation Act 1999.
Note: The heading to	section 164B is altered by adding at the end "(fisheries matters)".
866 After sectio	n 164B
Insert:	
164BA Grant of e	enforcement visas (environment matters)
Non-citi zone	zen on vessel (environment matters) outside migration
migratio	itizen on a vessel (environment matters) outside the on zone is granted an enforcement visa when, because an ment officer, or the person in command of a
Commo grounds	nwealth ship or a Commonwealth aircraft, has reasonable to suspect that the vessel has been used or otherwise I in the commission of an environment detention offence,
	ronment officer or person in command:
En	ercises his or her power under paragraph 403(3)(a) of the avironment Protection and Biodiversity Conservation Act 1999 in relation to the vessel; or
(b) ma un	akes a requirement of the person in charge of the vessel der paragraph 403(3)(b) of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> ;
	ver occurs first.
Note 1:	Under paragraph 403(3)(a) of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> , an environment officer, or the person in command of a Commonwealth ship or a Commonwealth aircraft, may bring a vessel into the migration zone. Under paragraph 403(3)(b) of that Act, an environment officer, or the person in command of a Commonwealth ship or a Commonwealth aircraft, may
	enforces that is given that is given that is given that is given the property of the property

2		visa that the non-citizen may hav	re held (see subsection 82(2A)).
3		Ion-citizen in migration zone	
4	(2)	non-citizen in the migration zone	who does not already hold an
5		nforcement visa is granted an enfor	cement visa when he or she is
6		etained by an environment officer u	
7		Invironment Protection and Biodive	ersity Conservation Act 1999.
8 9		ote: The grant of an enforcement visa visa that the non-citizen may hav	a effectively cancels any temporary ve held (see subsection 82(2A)).
10		Ion-citizen in prescribed circumstar	nces
11	(3)	an enforcement visa is granted to a	non-citizen (who does not
12		lready hold an enforcement visa) w	hen an environment officer
13		xercises under the Environment Pro	otection and Biodiversity
14		Conservation Act 1999 a prescribed	
15		ircumstances in relation to the non-	citizen. The visa is granted at
16		ne time the power is exercised.	
17 18		ote: The grant of an enforcement visa visa that the non-citizen may hav	e fefectively cancels any temporary be held (see subsection 82(2A)).
19		on-citizen on vessel or aircraft in p	prescribed circumstances
20	(4)	an enforcement visa is granted to a	non-citizen (who does not
21	` '	lready hold an enforcement visa) w	
22		environment matters) or a foreign a	ircraft (environment matters)
23		hen an environment officer exercis	es under the Environment
24		Protection and Biodiversity Conserv	ation Act 1999 a prescribed
25		ower in prescribed circumstances in	
26		ircraft. The visa is granted at the tin	ne the power is exercised.
27 28		ote: The grant of an enforcement visa visa that the non-citizen may hav	a effectively cancels any temporary re held (see subsection 82(2A)).
29		Inforcement visas granted by force of	of this section
30	(5)	o avoid doubt, an enforcement visa	is granted by force of this
31		ection.	- •
32		ote: No administrative action under the	his Act is necessary to grant the visa.

1		Exception if Minister's declaration in force
2 3		(6) Despite subsections (1), (2), (3) and (4), a non-citizen is not granted an enforcement visa if a declaration under subsection (7) is
4		in force in relation to:
5		(a) the non-citizen; or
6		(b) a class of persons of which the non-citizen is a member.
7		Declaration
8		(7) The Minister may make a written declaration, for the purposes of
9		this section, that it is undesirable that a person, or any persons in a
10		class of persons, travel to and enter Australia or remain in
11		Australia.
12		Section does not apply to Australian residents
13		(8) This section does not apply to non-citizens who are Australian
14		residents as defined in Schedule 1 to the Environment Protection
15		and Biodiversity Conservation Act 1999.
16	867	Subsection 164C(1)
17		After "enforcement visa", insert "(fisheries matters)".
18 19	Note:	The heading to subsection 164C(1) is replaced by the heading "Enforcement visa (fisheries matters)—non-citizen in fisheries detention".
20	868	Subsection 164C(2)
21		After "enforcement visa", insert "(fisheries matters)".
22 23	Note:	The heading to subsection 164C(2) is replaced by the heading "Enforcement visa (fisheries matters)—non-citizen not in fisheries detention".
24	869	At the end of section 164C
25		Add:
26		Enforcement visa (environment matters)—non-citizen in
27		environment detention
28		(3) The enforcement visa (environment matters) of a non-citizen who
29		is in environment detention ceases to be in effect:
30		(a) at the time the non-citizen is released, or escapes, from
31		environment detention; or

1	(b) at the time the Minister makes a declaration under subsection
2	164BA(7) in relation to the non-citizen, or a class of persons
3	of which the non-citizen is a member; or
4	(c) on the occurrence of a prescribed event;
5	whichever occurs first.
6	Enforcement visa (environment matters)—non-citizen not in
7	environment detention
8	(4) The enforcement visa (environment matters) of a non-citizen who
9	is not in environment detention ceases to be in effect:
10	(a) at the time a decision is made not to charge the non-citizen
1	with an environment detention offence; or
12	(b) at the time the Minister makes a declaration under subsection
13	164BA(7) in relation to the non-citizen, or a class of persons
4	of which the non-citizen is a member; or
15	(c) on the occurrence of a prescribed event;
16	whichever occurs first.

2	Schedule 2—Application, saving and transitional provisions
4	Part 1—Preliminary
5	1 Definitions
6	In this Schedule:
7	amending Schedule means Schedule 1 to this Act.
8	EPBC Act means the Environment Protection and Biodiversity
9	Conservation Act 1999.

2 3	Part	2—Provisions relating to assessments and approvals
4	Divis	sion 1—Main provisions
5	2 De	efinitions
6		In this Division:
7 8		amended EPBC Act means the EPBC Act as in force after the commencement time.
9 10		<i>commencement time</i> means the commencement of item 185 of the amending Schedule.
11 12		<i>old EPBC Act</i> means the EPBC Act as in force before the commencement time.
13	3 Ac	ctions referred under Division 1 of Part 7 before the
14		commencement time—general
15 16 17 18	(1)	This item applies in relation to a proposal by a person to take an action that was referred to the Minister under Division 1 of Part 7 of the EPBC Act before the commencement time, but only if the Minister had not, before that time, decided under section 133 of the EPBC Act to approve or refuse to approve the taking of the action.
19 20 21 22	(2)	The amendments of Parts 7 and 8 and Division 1 of Part 9 of the EPBC Act made by the following items of the amending Schedule apply in relation to the action:
23		(a) item 178;
24		(b) item 179;
25		(c) item 188;
26		(d) item 189;
27		(e) item 194;
28		(f) item 201;
29		(g) item 202;
30		(h) item 255;
31		(i) item 256;
32		(j) item 257;
33		(k) item 258;

1		(1) item 260;
2		(m) item 261;
3		(n) item 264;
4		(o) item 265;
5		(p) item 266;
6		(q) item 267;
7		(r) item 268;
8		(s) item 269;
9		(t) item 270;
10		(u) item 271;
11		(v) item 272;
12		(w) item 273;
13		(x) item 274;
14		(y) item 275;
15		(z) item 276;
16		(za) item 277;
17		(zb) item 285.
18	(3)	Subject to item 4:
19		(a) the other amendments of Part 7 (other than the amendments
20		of that Part made by items 172 and 173), Part 8 and
21 22		Division 1 of Part 9 of the EPBC Act made by the amending Schedule; and
23		(b) the amendments of section 170A of the EPBC Act made by
24		the amending Schedule;
25		do not apply in relation to the action.
26	(4)	The amendments of Parts 9 and 11 (other than amendments to which
27	. ,	subitem (2) or (3) applies) of the EPBC Act made by the amending
28		Schedule apply in relation to the action.
29	4 Mii	nister may determine that particular amendments of the
30	7 10111	EPBC Act are to apply to an action referred under
31		Division 1 of Part 7 before the commencement time
	245	
32	(1)	This item applies in relation to a proposal by a person to take an action
33 34		that was referred to the Minister under Division 1 of Part 7 of the EPBC Act before the commencement time, but only if the Minister had not,
54		The before the commencement time, but only if the minister flat hot,

1 2		before that time, decided under section 87 of the EPBC Act on the approach to be used for assessment of the relevant impacts of the action.
3	(2)	The Minister may determine, in writing, that some or all of the
4	()	amendments of the EPBC Act to which subitem 3(3) applies are to
5		apply in relation to a particular action to which this item applies, subject
6		to such modifications of Part 7 and Division 3 of Part 8 of the EPBC
7		Act as are specified in the determination. However, the determination
8		must not:
9 10		(a) increase, or have the effect of increasing, the maximum penalty for any offence; or
11 12		(b) widen, or have the effect of widening, the scope of any offence.
13	(3)	Before making a determination under subitem (2) in relation to a
14	(-)	particular action, the Minister (the <i>Environment Minister</i>) must inform
15		the following persons that the Environment Minister proposes to make
16		the determination:
17		(a) the person proposing to take the action;
18		(b) the designated proponent of the action (if a person has been
19 20		designated as proponent of the action and the person is not the person proposing to take the action);
21		(c) if the action is to be taken in a State or self-governing
22		Territory and the Environment Minister thinks the action may
23		have an impact on a matter protected by a provision of
24		Division 1 of Part 3 of the amended EPBC Act (about matters
25		of national environmental significance)—the appropriate
26		Minister of the State or Territory.
27	(4)	A determination made under subitem (2) is a legislative instrument, but
28		section 42 of the Legislative Instruments Act 2003 does not apply to the
29		determination.
30	(5)	In this item:
31		modifications includes omissions, additions and substitutions.
32	5 Pr	oposals to authorise actions referred under section 161
33		before the commencement time—assessment approach
34		decision made

1 2	(1)	This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the
3		Commonwealth proposes to authorise if:
4		(a) the proposal to give the authorisation was referred to the
5		Minister under section 161 of the EPBC Act before the
6		commencement time; and
7		(b) before that time, the Minister:
8		(i) had decided under section 87 of the EPBC Act (as
9		applied by section 162 of that Act) on the approach to
10		be used for assessment of the impact that the action has,
11		will have, or is likely to have on the environment; but
12		(ii) had not given advice about the proposal to give the
13		authorisation of the action under section 163 of the
14		EPBC Act.
15	(2)	The amendments of Part 8, Subdivision A of Division 4 of Part 11 and
16	· /	section 170A of the EPBC Act made by the amending Schedule do not
17		apply in relation to the action.
	6 D.	reposals to sutherine actions referred under coetion 161
18	0 1	oposals to authorise actions referred under section 161
10		•
19		before the commencement time—assessment approach
19 20		•
	(1)	before the commencement time—assessment approach
20	(1)	before the commencement time—assessment approach decision not made
20 21	(1)	before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2)
20 21 22	(1)	before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the
20 21 22 23	(1)	before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the
20 21 22 23 24	(1)	before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and
20 21 22 23 24 25	(1)	before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and (b) the Minister had not, before that time, decided under
20 21 22 23 24 25 26 27 28	(1)	before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and (b) the Minister had not, before that time, decided under section 87 of the EPBC Act (as applied by section 162 of that
20 21 22 23 24 25 26 27 28 29	(1)	before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and (b) the Minister had not, before that time, decided under section 87 of the EPBC Act (as applied by section 162 of that Act) on the approach to be used for assessment of the impact
20 21 22 23 24 25 26 27 28 29 30	(1)	before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and (b) the Minister had not, before that time, decided under section 87 of the EPBC Act (as applied by section 162 of that Act) on the approach to be used for assessment of the impact that the action has, will have, or is likely to have on the
20 21 22 23 24 25 26 27 28 29	(1)	before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and (b) the Minister had not, before that time, decided under section 87 of the EPBC Act (as applied by section 162 of that Act) on the approach to be used for assessment of the impact
20 21 22 23 24 25 26 27 28 29 30	(1)	before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and (b) the Minister had not, before that time, decided under section 87 of the EPBC Act (as applied by section 162 of that Act) on the approach to be used for assessment of the impact that the action has, will have, or is likely to have on the
20 21 22 23 24 25 26 27 28 29 30 31		before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and (b) the Minister had not, before that time, decided under section 87 of the EPBC Act (as applied by section 162 of that Act) on the approach to be used for assessment of the impact that the action has, will have, or is likely to have on the environment.
20 21 22 23 24 25 26 27 28 29 30 31		before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and (b) the Minister had not, before that time, decided under section 87 of the EPBC Act (as applied by section 162 of that Act) on the approach to be used for assessment of the impact that the action has, will have, or is likely to have on the environment. The amendments of Part 8, Subdivision A of Division 4 of Part 11 and
20 21 22 23 24 25 26 27 28 29 30 31 32 33 34	(2)	before the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and (b) the Minister had not, before that time, decided under section 87 of the EPBC Act (as applied by section 162 of that Act) on the approach to be used for assessment of the impact that the action has, will have, or is likely to have on the environment. The amendments of Part 8, Subdivision A of Division 4 of Part 11 and section 170A of the EPBC Act made by the amending Schedule apply in relation to the action.
20 21 22 23 24 25 26 27 28 29 30 31 32 33	(2)	Defore the commencement time—assessment approach decision not made This item applies in relation to an action described in subsection 160(2) of the EPBC Act that a Commonwealth agency or employee of the Commonwealth proposes to authorise if: (a) the proposal to give the authorisation was referred to the Minister under section 161 of the EPBC Act before the commencement time; and (b) the Minister had not, before that time, decided under section 87 of the EPBC Act (as applied by section 162 of that Act) on the approach to be used for assessment of the impact that the action has, will have, or is likely to have on the environment. The amendments of Part 8, Subdivision A of Division 4 of Part 11 and section 170A of the EPBC Act made by the amending Schedule apply

This item applies in relation to an action that is the subject of an (1) 1 agreement that was made under section 167 of the EPBC Act before the 2 commencement time. 3 (2) The amendments of Part 8, Division 1 of Part 10, Subdivision C of 4 Division 4 of Part 11 and section 170A of the EPBC Act made by the 5 amending Schedule do not apply in relation to the action or the 6 agreement. 7

8 Saving regulations

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- (1) Regulations made for the purposes of paragraph 93(1)(a) of the old EPBC Act continue in force after the commencement time as if they had been made for the purposes of subsections 95(2) and 95A(3) of the amended EPBC Act.
- Regulations made for the purposes of subsection 99(4) of the old EPBC Act continue in force after the commencement time as if they had been made for the purposes of subsection 99(4) of the amended EPBC Act.
- 16 (3) Regulations made for the purposes of subsection 104(4) of the old
 17 EPBC Act continue in force after the commencement time as if they had
 18 been made for the purposes of subsection 104(4) of the amended EPBC
 19 Act.
- Subitems (1), (2) and (3) do not prevent amendment or repeal of the regulations referred to in those subitems.

Division 2—Other provisions

9 Application of amendments made by items 68 etc.

The amendments made by items 68, 84, 172, 173, 783 and 814 of the amending Schedule apply to actions taken after the commencement of those items.

10 Application of amendments made by items 123 etc.

The amendments made by items 123, 124, 125, 126, 127, 128, 129, 130, 809 and 831 of the amending Schedule apply to actions taken after the commencement of those items.

11 Application of amendments made by items 109 and 110

The amendments made by items 109 and 110 of the amending Schedule apply in relation to a management arrangement or an authorisation process that is laid before each House of the Parliament under section 33 of the EPBC Act after the commencement of those items.

12 Application of amendments made by items 144 and 145

The amendments made by items 144 and 145 of the amending Schedule apply in relation to a management arrangement or an authorisation process that is laid before each House of the Parliament under section 46 of the EPBC Act after the commencement of those items.

13 Saving of accredited management plans

- (1) If, immediately before the commencement of item 93 of the amending Schedule, a management plan is an accredited management plan under section 33 of the EPBC Act for the purposes of a declaration under that section, then, immediately after the commencement of that item, the accredited management plan is taken to be an accredited management arrangement for the purposes of the EPBC Act as in force after the commencement of that item.
- (2) If, immediately before the commencement of item 131 of the amending Schedule, a management plan is a bilaterally accredited management plan under section 46 of the EPBC Act for the purposes of a bilateral agreement under section 45 of that Act, then, after the commencement of that item, the bilaterally accredited management plan is taken to be a bilaterally accredited management arrangement for the purposes of the EPBC Act as in force after the commencement of that item.

2	Part	3—Provisions relating to recovery plans and conservation advice
4	14 C	Definitions
5		In this Part:
6 7		amended EPBC Act means the EPBC Act as in force after the commencement time.
8 9		<i>commencement time</i> means the commencement of item 471 of the amending Schedule.
10		Scientific Committee has the same meaning as in the EPBC Act.
11 12	15 L	isted species or communities for which there are already recovery plans
13 14 15	(1)	This item applies in relation to each species and ecological community in relation to which the following paragraphs were satisfied immediately before the commencement time:
16 17		 (a) the species or community was a listed threatened species or a listed threatened ecological community;
18 19 20		(b) a recovery plan for the species or community had been made and was in force, or had been made but had not yet come into force.
21 22 23 24 25 26 27	(2)	The amended EPBC Act applies in relation to the species or community as if the recovery plan had been made: (a) immediately after the commencement time under section 269A of the amended EPBC Act; and (b) pursuant to a decision of the Minister under subsection 269AA(1) of the amended EPBC Act to have a recovery plan for the species or community.
28 29 30	(3)	In making a subsequent recovery plan decision, within the meaning of section 269AA of the amended EPBC Act, in relation to the species or community, paragraph 269AA(4)(a) does not apply.
31 32	(4)	Section 266B of the amended EPBC Act does not apply in relation to the species or community unless and until:

1 2 3 4 5		 (a) the Minister decides, as mentioned in subsection 269AA(5) of the amended EPBC Act, not to have a recovery plan for the species or community; and (b) the Scientific Committee gives the Minister information or a statement as required by subitem (5).
6 7 8 9	(5)	If the Minister makes a decision as mentioned in paragraph (4)(a) in relation to the species or community, the Scientific Committee must, within 30 days, give the Minister information or a statement of the kind referred to in paragraph 189(1B)(b) of the amended EPBC Act.
10 11	16	Listed species or communities for which there are not already recovery plans Scientific Committee to give the Minister 2 lists
12 13 14	(1)	Within 6 months after the commencement time, the Scientific Committee must prepare and give to the Minister:
15 16 17 18		(a) a written list (the <i>Recovery Planning Action Commenced List</i>) of all the species or communities in relation to which the following subparagraphs were satisfied immediately before the commencement time:
19 20		(i) the species or community was a listed threatened species or a listed threatened ecological community;
212223		(ii) a recovery plan for the species or community had not yet been made;(iii) work on the development of a recovery plan for the
242526		species or community had started; and (b) a written list (the <i>Recovery Planning Action Not Commenced List</i>) of all the species or communities in
272829		relation to which the following subparagraphs were satisfied immediately before the commencement time: (i) the species or community was a listed threatened
30 31 32		species or a listed threatened ecological community; (ii) a recovery plan for the species or community had not yet been made;
33 34		(iii) work on the development of a recovery plan for the species or community had not yet started.

1 2		Recovery Planning Action Not Commenced List to specify time for provision of material to Minister
3 4 5 6 7	(2)	The Recovery Planning Action Not Commenced List must specify, for each species or community in the list, the time (the <i>compliance time</i>) by which the Scientific Committee will give the Minister material of the kind referred to in paragraphs 189(1B)(b) and (c) of the amended EPBC Act.
8 9 10 11 12	(3)	The Minister may, in writing, direct the Scientific Committee to make a particular change to the compliance time specified in the Recovery Planning Action Not Commenced List in relation to a particular species or community. The Scientific Committee must comply with the direction.
13		Lists etc. are not legislative instruments
14 15 16 17	(4)	None of the following are legislative instruments: (a) the Recovery Planning Action Commenced List; (b) the Recovery Planning Action Not Commenced List; (c) a direction under subitem (3).
18 19 20	(5)	The Minister must publish the Recovery Planning Action Commenced List and the Recovery Planning Action Not Commenced List on the Internet.
21 22	17 S	Species or communities in the Recovery Planning Action Commenced List
23 24	(1)	This item applies in relation to each species and ecological community included in the Recovery Planning Action Commenced List.
25 26 27 28	(2)	The amended EPBC Act applies in relation to the species or community as if the Minister had, immediately after the commencement time, decided under subsection 269AA(1) of the amended EPBC Act to have a recovery plan for the species or community.
29 30 31	(3)	In making a subsequent recovery plan decision, within the meaning of section 269AA of the amended EPBC Act, in relation to the species or community, paragraph 269AA(4)(a) does not apply.
32 33	(4)	Section 266B of the amended EPBC Act does not apply in relation to the species or community unless and until:

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lies in relation to ys after the species e to 90 days after rial required by

Pa	rt 4—Provisions relating to fisheries
19	Application of amendment made by item 1
	The amendment made by item 1 of the amending Schedule applies to
	fishing activities engaged in after the commencement of that item
	(whether the relevant plan of management is in force under the
	Fisheries Management Act 1991 before or after that commencement).
20	Application of amendments made by items 315 and 316
	The amendments made by items 315 and 316 of the amending Schedule apply to agreements made under section 146 of the EPBC Act after the
	commencement of those items.
21	Application of amendment made by item 319
	The amendment made by item 319 of the amending Schedule applies to
	an agreement between Ministers of the kind referred to in subsection
	152(1) of the EPBC Act that is made after the commencement of that item.
22	Application of amendment made by item 320
	The amendment made by item 320 of the amending Schedule applies to
	agreements made under section 146 of the EPBC Act after the
	commencement of that item.
23	Application of amendments made by items 391 etc.
(1)	The amendments made by items 391, 416, 449 and 466 of the amending
	Schedule apply to any plan, regime or policy accredited under
	section 208A, 222A, 245 or 265 of the EPBC Act after the
	commencement of those items.
(2)	The amendments made by items 391, 416, 449 and 466 of the amending
	Schedule do not affect the continuity of any accreditation, under
	section 208A, 222A, 245 or 265 of the EPBC Act, of a plan or regime
	that occurs before the commencement of those items.
24	Application of amendment made by item 487

	The amendment made by item 487 of the amending Schedule applies to
	any plan, regime or policy, whether the plan, regime or policy was
}	accredited under section 208A, 222A, 245 or 265 of the EPBC Act
ļ	before or after the commencement of that item.

2	Pa	rt 5—Other provisions relating to protected species
4	25	Application of amendments made by items 181 etc.
5 6 7		The amendments made by items 181, 382, 385, 411, 412, 437, 444, 461, 462 and 467 of the amending Schedule apply in relation to applications made after the commencement of those items.
8	26	Continued application of Subdivision B of Division 4 of Part 11
10		Despite the repeal of Subdivision B of Division 4 of Part 11 of the
11		EPBC Act by item 330 of the amending Schedule, that Subdivision
12 13		continues to apply in relation to an application for a permit under Division 3 of Part 13 of the EPBC Act that was made before the
14		commencement of that item.
15	27	Inventories prepared under section 172
16	(1)	This item applies to inventories that were prepared under section 172 of
17 18		the EPBC Act as in force immediately before the commencement of item 349 of the amending Schedule.
19	(2)	The inventories have effect, after the commencement of that item, as if
20 21		they had been prepared under section 172 of the EPBC Act as amended by that item.
22	28	Surveys prepared under section 173
23	(1)	This item applies to surveys that were prepared under section 173 of the
24		EPBC Act as in force immediately before the commencement of
25		item 350 of the amending Schedule.
26	(2)	The surveys have effect, after the commencement of that item, as if they
27		had been prepared under section 173 of the EPBC Act as amended by
28		that item.
29	29	Application of amendments made by items 417 etc.

The amendments made by items 417, 418, 423, 424, 425, 426, 428, 434, 1 439, 441, 811, 812, 816 and 833 of the amending Schedule apply in 2 relation to actions (however described) taken after the commencement 3 of those items. 4 30 Application of amendment made by item 420 5 6 The amendment made by item 420 of the amending Schedule applies in relation to actions (however described) taken after the commencement 7 of that item. 8 31 Application of amendments made by items 429 and 440 9 (1) The amendment made by item 429 of the amending Schedule applies in 10 relation to actions (however described) taken after the commencement 11 of that item. 12 The amendment made by item 440 of the amending Schedule applies in (2) 13 relation to an application for a permit under section 237 of the EPBC 14 Act that is made after the commencement of that item. 15 32 Application of amendments made by items 430 and 431 16 The amendments made by items 430 and 431 of the amending Schedule 17 apply in relation to actions taken after the commencement of those 18 items. 19 33 Application of amendments made by items 435 and 445 20 The amendment made by item 435 of the amending Schedule applies in (1) 21 relation to a vessel brought into a port after the commencement of that 22 item. 23 (2) The amendment made by item 445 of the amending Schedule applies in 24 relation to an application for a permit under section 237 of the EPBC 25 Act that is made after the commencement of that item. 26 34 Saving regulations 27 Regulations in force, before the commencement of item 440 of the (1) 28 amending Schedule, for the purposes of paragraph 238(3)(c) of the 29 EPBC Act continue in force after that commencement as if they had 30 been made for the purposes of that paragraph of that Act as amended by 31 that item. 32

Subitem (1) does not prevent amendment or repeal of the regulations referred to in that subitem. (2) 1 2

Part 6—Provisions related to wildlife trade 2 35 Application of amendments made by items 488 etc. 3 The amendments made by items 488, 489, 496, 499, 500, 503, 509, 510, 4 511, 514, 515, 516, 517, 518, 519, 520, 521, 523, 524, 525 and 527 of 5 the amending Schedule apply to permits granted after the 6 commencement of those items. 7 36 Application of amendments made by items 506 etc. 8 The amendments made by items 506, 507, 508 and 522 of the amending 9 Schedule apply to assessments started after the commencement of those 10 11 items.

37	Definitions
	In this Part:
	amended EPBC Act:
	(a) when used in item 38—means the EPBC Act as in force after the species commencement time; and
	(b) when used in the other items of this Part—means the EPBC Act as in force after the heritage commencement time.
	<i>heritage commencement time</i> means the commencement of item 550 of the amending Schedule.
	old EPBC Act:
	(a) when used in item 38—means the EPBC Act as in force before the species commencement time; and
	(b) when used in the other items of this Part—means the EPBC Act as in force before the heritage commencement time.
	species commencement time means the commencement of item 368 of
	the amending Schedule.
38	the amending Schedule. Section 191 nominations made before the species
38	-
	Section 191 nominations made before the species commencement time
38 (1)	Section 191 nominations made before the species
	Section 191 nominations made before the species commencement time This item applies if, before the species commencement time: (a) an item had been nominated under section 191 of the old EPBC Act for inclusion in a list referred to in section 178,
	Section 191 nominations made before the species commencement time This item applies if, before the species commencement time: (a) an item had been nominated under section 191 of the old EPBC Act for inclusion in a list referred to in section 178, 181 or 183 of the old EPBC Act; and
	Section 191 nominations made before the species commencement time This item applies if, before the species commencement time: (a) an item had been nominated under section 191 of the old EPBC Act for inclusion in a list referred to in section 178,
	Section 191 nominations made before the species commencement time This item applies if, before the species commencement time: (a) an item had been nominated under section 191 of the old EPBC Act for inclusion in a list referred to in section 178, 181 or 183 of the old EPBC Act; and (b) the Minister had not decided whether to include the item in
(1)	Section 191 nominations made before the species commencement time This item applies if, before the species commencement time: (a) an item had been nominated under section 191 of the old EPBC Act for inclusion in a list referred to in section 178, 181 or 183 of the old EPBC Act; and (b) the Minister had not decided whether to include the item in the list. The nomination is taken to have been made, for the purposes of the
(1)	Section 191 nominations made before the species commencement time This item applies if, before the species commencement time: (a) an item had been nominated under section 191 of the old EPBC Act for inclusion in a list referred to in section 178, 181 or 183 of the old EPBC Act; and (b) the Minister had not decided whether to include the item in the list. The nomination is taken to have been made, for the purposes of the amended EPBC Act, in response to the invitation under section 194E of the amended EPBC Act in relation to the first assessment period for the
(1)	Section 191 nominations made before the species commencement time This item applies if, before the species commencement time: (a) an item had been nominated under section 191 of the old EPBC Act for inclusion in a list referred to in section 178, 181 or 183 of the old EPBC Act; and (b) the Minister had not decided whether to include the item in the list. The nomination is taken to have been made, for the purposes of the amended EPBC Act, in response to the invitation under section 194E of
(1)	Section 191 nominations made before the species commencement time This item applies if, before the species commencement time: (a) an item had been nominated under section 191 of the old EPBC Act for inclusion in a list referred to in section 178, 181 or 183 of the old EPBC Act; and (b) the Minister had not decided whether to include the item in the list. The nomination is taken to have been made, for the purposes of the amended EPBC Act, in response to the invitation under section 194E of the amended EPBC Act in relation to the first assessment period for the

1 2 3	Note:	For the item to have been nominated under section 191 of the old EPBC Act, the nomination must have been made in accordance with the regulations made for the purposes of that section.
4 5 6 7 8	(4)	If, before the species commencement time, the nomination had been forwarded to the Scientific Committee under section 191 of the old EPBC Act, the Minister is taken, for the purposes of section 194F of the amended EPBC Act, to have given the nomination to the Scientific Committee in relation to the first assessment period for the list.
9 10 11 12 13	Note 1:	If under this subitem the Minister is taken, for the purposes of section 194F of the amended EPBC Act, to have given the nomination to the Scientific Committee, the Committee must then decide whether to include the item on the proposed priority assessment list for the first assessment period (see section 194G of the amended EPBC Act).
14 15 16 17	Note 2:	If the nomination had not been forwarded to the Scientific Committee before the species commencement time, section 194F of the amended EPBC Act requires the Minister to give the nomination to the Scientific Committee together with the other nominations in relation to the first assessment period.
18 19 20	(5)	The Minister, and the Scientific Committee, may take into account, in dealing with the nomination, any information that was obtained in relation to the nomination under the old EPBC Act.
21 22 23 24 25 26 27	(6)	If the Minister determines, in writing, that this subitem applies in relation to the nomination of the item, then, in relation to that nomination of the item: (a) the Scientific Committee is taken to have complied with section 194M of the amended EPBC Act; and (b) paragraph 194N(2)(a) and subsection 194N(3) of the amended EPBC Act do not apply.
28 29 30 31 32 33 34 35 36 37 38 39	(7)	If: (a) the Scientific Committee had, before the species commencement time, given the Minister advice about the nomination in accordance with section 189 of the old EPBC Act; and (b) the Minister determines, in writing, that this subitem applies to the nomination of the item for the first assessment period; then that advice is taken, for the purposes of the amended EPBC Act, to be an assessment given by the Committee to the Minister: (c) in accordance with subsection 194N(1) of the amended EPBC Act in relation to the nomination of the item for the first assessment period; and

1 2		(d) on the day the Minister makes the determination referred to in paragraph (b).
3	(8)	A determination under subitem (6) or (7) is not a legislative instrument.
4 5	39 S	ection 324E nominations made before the heritage commencement time
6 7 8 9 10	(1)	This item applies if, before the heritage commencement time: (a) a place had been nominated under section 324E of the old EPBC Act; and (b) the place is within the Australian jurisdiction; and (c) the Minister had not decided whether to include the place in the National Heritage List.
12 13 14 15	(2)	The nomination is taken to have been made, for the purposes of the amended EPBC Act, in response to the invitation under section 324J of the amended EPBC Act in relation to the first assessment period for the National Heritage List.
16 17 18	(3)	The regulations referred to in paragraph 324J(3)(b) and (c) of the amended EPBC Act are taken to have been complied with in relation to the nomination.
19 20 21	Note:	For a place to have been nominated under section 324E of the old EPBC Act, the nomination must have been made in accordance with the regulations made for the purposes of that section.
22 23 24 25 26	(4)	If, before the heritage commencement time, the Minister had requested the Australian Heritage Council to assess the place, the Minister is taken, for the purposes of section 324JA of the amended EPBC Act, to have given the nomination to the Australian Heritage Council in relation to the first assessment period for the National Heritage List.
27 28 29 30 31	Note 1:	If under this subitem the Minister is taken, for the purposes of section 324JA of the amended EPBC Act, to have given the nomination to the Australian Heritage Council, the Council must then decide whether to include the place on the proposed priority assessment list for the first assessment period (see section 324JB of the amended EPBC Act).
32 33 34 35	Note 2:	If, before the heritage commencement time, the Minister had not requested the Australian Heritage Council to assess the place, section 324JA of the amended EPBC Act requires the Minister to give the nomination to the Australian Heritage Council together with the other nominations in relation to the first assessment period.

1 2 3	(5)	The Minister, and the Australian Heritage Council, may take into account, in dealing with the nomination, any information that was obtained in relation to the nomination under the old EPBC Act.
4	(6)	If:
5	. ,	(a) the Australian Heritage Council had, before the heritage
6		commencement time, complied with subsection 324G(3A) of
7		the old EPBC Act in relation to the assessment of the place;
8		and
9		(b) the Minister determines, in writing, that this subitem applies
10		to the nomination of the place for the first assessment period;
11		then, in relation to that nomination of the place:
12 13		(c) the Australian Heritage Council is taken to have complied with section 324JG of the amended EPBC Act; and
14		(d) references in the amended EPBC Act to the notice under
15		subsection 324JG(1) are taken to be references to the notice
16		(the <i>old EPBC Act notice</i>) published by the Council when
17		complying with subsection 324G(3A) of the old EPBC Act in
18		relation to the assessment of the place; and
19		(e) regulations (if any) referred to in paragraph 324JG(4)(b) of
20		the amended EPBC Act do not apply to comments received
21		by the Council in response to the old EPBC Act notice.
22	(7)	If:
23		(a) the Australian Heritage Council had, before the heritage
24		commencement time, complied with subsection 324G(4) of
25		the old EPBC Act in relation to the assessment of the place;
26		and
27		(b) the Minister determines, in writing, that this subitem applies
28		to the nomination of the place for the first assessment period;
29		then, in relation to that nomination of the place:
30		(c) the Australian Heritage Council is taken to have complied
31		with subsection 324JH(5) of the amended EPBC Act; and
32		(d) the reference in paragraph 324JH(2)(b) of the amended
33		EPBC Act to paragraph 324JH(5)(c) is taken to be a
34		reference to paragraph 324G(4)(c) of the old EPBC Act.
35	(8)	If:
36		(a) the Australian Heritage Council had, before the heritage
37		commencement time, given the Minister a written assessment

1 2		of the place in accordance with section 324G of the old EPBC Act; and
3 4		(b) the Minister determines, in writing, that this subitem applies to the nomination of the place for the first assessment period;
5		then that assessment, and any comments given to the Minister by the
6		Council under section 324G of the old EPBC Act with that assessment,
7		are taken, for the purposes of the amended EPBC Act, to have been
8		given by the Council to the Minister:
9		(c) in accordance with subsection 324JH(1) of the amended
10		EPBC Act in relation to that place; and
11 12		(d) on the day the Minister makes the determination referred to in paragraph (b).
13	(9)	A determination under subitem (6), (7) or (8) is not a legislative
14	(2)	instrument.
	_	
15	40 5	Section 324F emergency listings before the heritage
16		commencement time
17	(1)	This item applies if, before the heritage commencement time:
18	. ,	(a) a place had been included in the National Heritage List under
19		section 324F of the old EPBC Act at a particular time (the
20		inclusion time); and
21		(b) the Minister had not acted under subsection 324J(5) of the
22		old EPBC Act in relation to the continued inclusion of the
23		place in the National Heritage List.
24	(2)	The place is taken, for the purposes of the amended EPBC Act, to have
25	(-)	been included in the National Heritage List (the <i>amended EPBC Act</i>
26		emergency listing of the place):
27		(a) under subsection 324JL(1) of the amended EPBC Act; and
28		(b) at the inclusion time.
20	(3)	If the Minister had, before the heritage commencement time, complied
29 30	(3)	with subsection 324F(5) of the old EPBC Act in relation to the inclusion
31		of the place in the National Heritage List, the Minister is taken to have
32		complied with subsection 324JL(3) of the amended EPBC Act in
33		relation to the amended EPBC Act emergency listing of the place.
34	(4)	If the Minister had given the Chair of the Australian Heritage Council a
35	(-т)	request under subsection 324F(3) of the old EPBC Act for an

1 2		assessment of the place, the request is taken, for the purposes of the amended EPBC Act, to be a request:
3		(a) made under subsection 324JM(1) of the amended EPBC Act; and
5		(b) that specifies an assessment completion time that is the same
6 7		as the time the assessment would have become due under section 324G of the old EPBC Act if that section had not
8		been repealed.
9 10	(5)	The Minister, and the Australian Heritage Council, may take into account, in dealing with a matter relating to the amended EPBC Act
11		emergency listing of the place, any information that was obtained
12		before the heritage commencement time in relation to the inclusion of
13		the place in the National Heritage List under section 324F of the old EPBC Act.
14		EPDC ACI.
15	(6)	If:
16		(a) the Australian Heritage Council had, before the heritage
17		commencement time, complied with subsection 324G(3A) of
18		the old EPBC Act in relation to the assessment of the place;
19		and
20 21		(b) the Minister determines, in writing, that this subitem applies to the amended EPBC Act emergency listing of the place;
22		then, in relation to the amended EPBC Act emergency listing of the
23		place:
24 25		(c) the Australian Heritage Council is taken to have complied with section 324JN of the amended EPBC Act; and
26		(d) references in the amended EPBC Act (including as the
27		amended EPBC Act applies because of section 324JO of the
28		amended EPBC Act) to the notice under subsection 324JN(1)
29		are taken to be references to the notice (the <i>old EPBC Act</i>
30		<i>notice</i>) published by the Council when complying with
31		subsection 324G(3A) of the old EPBC Act in relation to the
32		assessment of the place; and
33		(e) regulations (if any) referred to in paragraph 324JN(3)(b) of
34		the amended EPBC Act do not apply to comments received
35		by the Council in response to the old EPBC Act notice.
36	(7)	If:
37		(a) the Australian Heritage Council had, before the heritage
38		commencement time, complied with subsection 324G(4) of

1 2		the old EPBC Act in relation to the assessment of the place; and
3		(b) the Minister determines, in writing, that this subitem applies to the amended EPBC Act emergency listing of the place;
5		then, in relation to the amended EPBC Act emergency listing of the
6		place:
7		(c) the Australian Heritage Council is taken to have complied
9		with subsection 324JH(5) of the amended EPBC Act (as that subsection applies because of section 324JO of the amended
10		EPBC Act); and
11		(d) the reference in paragraph 324JH(2)(b) of the amended
12		EPBC Act (as that paragraph applies because of
13		section 324JO of the amended EPBC Act) to paragraph
14		324JH(5)(c) is taken to be a reference to paragraph
15		324G(4)(c) of the old EPBC Act.
16	(8)	If:
17		(a) the Australian Heritage Council had, before the heritage
18		commencement time, given the Minister a written assessment
19		of the place in accordance with section 324G of the old
20		EPBC Act; and
21 22		(b) the Minister determines, in writing, that this subitem applies to the amended EPBC Act emergency listing of the place;
23		then that assessment, and any comments given to the Minister by the
24		Council under section 324G of the old EPBC Act with that assessment,
25		are taken, for the purposes of the amended EPBC Act, to have been
26		given by the Council to the Minister:
27		(c) in accordance with subsection 324JH(1) of the amended
28		EPBC Act (as that subsection applies because of
29		section 324JO of the amended EPBC Act) in relation to that
30		place; and
31		(d) on the day the Minister makes the determination referred to
32		in paragraph (b).
33	(9)	A determination under subitem (6), (7) or (8) is not a legislative
34	. ,	instrument.
35	41 C	hanges to section 324F emergency listings not
36		published etc. before the heritage commencement time
37		If, before the heritage commencement time:

1 2 3 4 5 6 7 8 9		 (a) under subsection 324J(5) of the old EPBC Act, the Minister removed from the National Heritage List a place or a National Heritage value of a place, or altered the boundary of a place included in the List; and (b) the Minister had not complied with subsection 324J(7) of the old EPBC Act in relation to the removal or alteration; then despite the repeal of subsections 324J(7) and (9) of the old EPBC Act, those subsections continue to apply after the heritage commencement time in relation to the removal or alteration as if the repeal had not happened.
11 12	42 Se	ection 341E nominations made before the heritage commencement time
13 14 15 16	(1)	This item applies if, before the heritage commencement time: (a) a place had been nominated under section 341E of the old EPBC Act; and (b) the Minister had not decided whether to include the place in
17 18 19 20 21	(2)	the Commonwealth Heritage List. The nomination is taken to have been made, for the purposes of the amended EPBC Act, in response to the invitation under section 341H of the amended EPBC Act in relation to the first assessment period for the Commonwealth Heritage List.
22 23 24	(3)	The regulations referred to in paragraph 341H(3)(b) and (c) of the amended EPBC Act are taken to have been complied with in relation to the nomination.
25 26 27	Note:	For a place to have been nominated under section 341E of the old EPBC Act, the nomination will have had to have been made in accordance with the regulations made for the purposes of that section.
28 29 30 31 32	(4)	If, before the heritage commencement time, the Minister had requested the Australian Heritage Council to assess the place, the Minister is taken, for the purposes of section 341J of the amended EPBC Act, to have given the nomination to the Australian Heritage Council in relation to the first assessment period for the Commonwealth Heritage List.
33 34 35 36 37	Note 1:	If under this subitem the Minister is taken, for the purposes of section 341J of the amended EPBC Act, to have given the nomination to the Australian Heritage Council, the Council must then decide whether to include the place on the proposed priority assessment list for the first assessment period (see section 341JA of the amended EPBC Act).

1 2 3 4	Note 2:	If, before the heritage commencement time, the Minister had not requested the Australian Heritage Council to assess the place, section 341J of the amended EPBC Act requires the Minister to give the nomination to the Australian Heritage Council together with the other nominations in relation to the first assessment period.
5 6 7	(5)	The Minister, and the Australian Heritage Council, may take into account, in dealing with the nomination, any information that was obtained in relation to the nomination under the old EPBC Act.
8	(6)	If:
9		(a) the Australian Heritage Council had, before the heritage
10		commencement time, complied with subsection 341G(3A) of
11 12		the old EPBC Act in relation to the assessment of the place; and
13		(b) the Minister determines, in writing, that this subitem applies
14		to the nomination of the place for the first assessment period;
15		then, in relation to that nomination of the place:
16		(c) the Australian Heritage Council is taken to have complied
17		with section 341JF of the amended EPBC Act; and
18		(d) references in the amended EPBC Act to the notice under
19		subsection 341JF(1) are taken to be references to the notice
20		(the <i>old EPBC Act notice</i>) published by the Council when
21 22		complying with subsection 341G(3A) of the old EPBC Act in relation to the assessment of the place; and
23		(e) regulations (if any) referred to in paragraph 341JF(4)(b) of
24		the amended EPBC Act do not apply to comments received
25		by the Council in response to the old EPBC Act notice.
26	(7)	If:
27		(a) the Australian Heritage Council had, before the heritage
28		commencement time, complied with subsection 341G(4) of
29		the old EPBC Act in relation to the assessment of the place;
30		and
31		(b) the Minister determines, in writing, that this subitem applies
32		to the nomination of the place for the first assessment period;
33		then, in relation to that nomination of the place:
34		(c) the Australian Heritage Council is taken to have complied
35		with subsection $341JG(5)$ of the amended EPBC Act; and
36 37		(d) the reference in paragraph 341JG(2)(b) of the amended EPBC Act to paragraph 341JG(5)(c) is taken to be a
38		reference to paragraph 341G(4)(c) of the old EPBC Act.
50		reference to paragraph 5 110(1)(0) of the old Di De Net.

1	(8)	If:
2		(a) the Australian Heritage Council had, before the heritage
3		commencement time, given the Minister a written assessment
4		of the place in accordance with section 341G of the old
5		EPBC Act; and
6 7		(b) the Minister determines, in writing, that this subitem applies to the nomination of the place for the first assessment period;
8 9 10		then that assessment, and any comments given to the Minister by the Council under section 341G of the old EPBC Act with that assessment, are taken, for the purposes of the amended EPBC Act, to have been given by the Council to the Minister.
11 12 13		given by the Council to the Minister: (c) in accordance with subsection 341JG(1) of the amended EPBC Act in relation to that place; and
14 15		(d) on the day the Minister makes the determination referred to in paragraph (b).
16 17	(9)	A determination under subitem (6), (7) or (8) is not a legislative instrument.
18	43 S	ection 341F emergency listings before the heritage
19		commencement time
20	(1)	This item applies if, before the heritage commencement time:
21	. ,	(a) a place had been included in the Commonwealth Heritage
22 23		List under section 341F of the old EPBC Act at a particular time (the <i>inclusion time</i>); and
24		(b) the Minister had not acted under subsection 341J(5) of the
25		old EPBC Act in relation to the continued inclusion of the
26		place in the Commonwealth Heritage List.
27	(2)	The place is taken, for the purposes of the amended EPBC Act, to have
28		been included in the Commonwealth Heritage List (the amended EPBC
29		Act emergency listing of the place):
30		(a) under subsection 341JK(1) of the amended EPBC Act; and
31		(b) at the inclusion time.
32	(3)	If the Minister had, before the heritage commencement time, complied
33		with subsection 341F(5) of the old EPBC Act in relation to the inclusion
34		of the place in the Commonwealth Heritage List, the Minister is taken
35		to have complied with subsection 341JK(3) of the amended EPBC Act
36		in relation to the amended EPBC Act emergency listing of the place.

1 2 3 4	(4)	request under subsection 341F(3) of the old EPBC Act for an assessment of the place, the request is taken, for the purposes of the amended EPBC Act, to be a request:
5 6		(a) made under subsection 341JL(1) of the amended EPBC Act; and
7 8		(b) that specifies an assessment completion time that is the same as the time the assessment would have become due under
9		section 324G of the old EPBC Act if that section had not
10		been repealed.
11	(5)	The Minister, and the Australian Heritage Council, may take into
12		account, in dealing with a matter relating to the amended EPBC Act
13 14		emergency listing of the place, any information that was obtained before the heritage commencement time in relation to the inclusion of
15		the place in the Commonwealth Heritage List under section 341F of the
16		old EPBC Act.
17	(6)	If:
18		(a) the Australian Heritage Council had, before the heritage
19		commencement time, complied with subsection 341G(3A) of
20		the old EPBC Act in relation to the assessment of the place;
21		and
22 23		(b) the Minister determines, in writing, that this subitem applies to the amended EPBC Act emergency listing of the place;
24 25		then, in relation to the amended EPBC Act emergency listing of the place:
26 27		(c) the Australian Heritage Council is taken to have complied with section 341JM of the amended EPBC Act; and
28		(d) references in the amended EPBC Act (including as the
29		amended EPBC Act applies because of section 341JN of the
30		amended EPBC Act) to the notice under subsection
31		341JM(1) are taken to be references to the notice (the <i>old</i>
32		EPBC Act notice) published by the Council when complying
33		with subsection 341G(3A) of the old EPBC Act in relation to
34		the assessment of the place; and
35		(e) regulations (if any) referred to in paragraph 341JM(3)(b) of the amended EPBC Act do not apply to comments received
36 37		by the Council in response to the old EPBC Act notice.
5,		•
38	(7)	If:

1 2 3 4		(a) the Australian Heritage Council had, before the heritage commencement time, complied with subsection 341G(4) of the old EPBC Act in relation to the assessment of the place; and
5 6		(b) the Minister determines, in writing, that this subitem applies to the amended EPBC Act emergency listing of the place;
7 8		then, in relation to the amended EPBC Act emergency listing of the place:
9 10 11 12		(c) the Australian Heritage Council is taken to have complied with subsection 341JG(5) of the amended EPBC Act (as that subsection applies because of section 341JN of the amended EPBC Act); and
13 14 15 16 17		(d) the reference in paragraph 341JG(2)(b) of the amended EPBC Act (as that paragraph applies because of section 341JN of the amended EPBC Act) to paragraph 341JG(5)(c) is taken to be a reference to paragraph 341G(4)(c) of the old EPBC Act.
18 19 20 21 22 23	(8)	 If: (a) the Australian Heritage Council had, before the heritage commencement time, given the Minister a written assessment of the place in accordance with section 341G of the old EPBC Act; and (b) the Minister determines, in writing, that this subitem applies
24 25 26 27 28		to the amended EPBC Act emergency listing of the place; then that assessment, and any comments given to the Minister by the Council under section 341G of the old EPBC Act with that assessment, are taken, for the purposes of the amended EPBC Act, to have been given by the Council to the Minister:
29 30 31 32 33 34		(c) in accordance with subsection 341JG(1) of the amended EPBC Act (as that subsection applies because of section 341JN of the amended EPBC Act) in relation to that place; and(d) on the day the Minister makes the determination referred to in paragraph (b).
35 36	(9)	A determination under subitem (6), (7) or (8) is not a legislative instrument.
37 38	44	Changes to section 341F emergency listings not published etc. before the heritage commencement time

1	If, before the heritage commencement time:
2	(a) under subsection 341J(5) of the old EPBC Act, the Minister
3	removed from the Commonwealth Heritage List a place or a
4	Commonwealth Heritage value of a place, or altered the
5	boundary of a place included in the List; and
6	(b) the Minister had not complied with subsection 341J(7) of the
7	old EPBC Act in relation to the removal or alteration;
8 9	then despite the repeal of subsections 341J(7) and (9) of the old EPBC Act, those subsections continue to apply after the heritage
10	commencement time in relation to the removal or alteration as if the
10	repeal had not happened.
. 1	repear had not happened.
2	45 Plans in force under subsection 324S(1) before the
13	heritage commencement time
4	Despite the repeal of subsection 324S(1) of the old EPBC Act:
15	(a) a plan that:
6	(i) was made under that subsection of the old EPBC Act;
17	and
8	(ii) was in force immediately before the heritage
9	commencement time;
20	continues in effect after the heritage commencement time as
21	if it had been made under subsection 324S(1) of the amended
22	EPBC Act; and
23	(b) an obligation that the Minister had, immediately before the
24	heritage commencement time, to make a plan under that
25	subsection of the old EPBC Act continues after the heritage
26	commencement time as if it were an obligation under
27	subsection 324S(1) of the amended EPBC Act.

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2	Pa	rt 8—Provisions relating to Commonwealth reserves
4	46	Application of amendment made by 599
5 6 7		The amendment made by 599 of the amending Schedule applies in relation to management plans approved by the Minister under section 370 of the EPBC Act after the commencement of that item.
8	47	Application of amendment made by 600
9 10 11		The amendment made by 600 of the amending Schedule applies in relation to management plans approved by the Minister under section 370 of the EPBC Act after the commencement of that item.
12	48	Application of amendment made by 601
13 14 15		The repeal and substitution of subsection 379(1) of the EPBC Act by item 601 of the amending Schedule applies in relation to appointments made after the commencement of that item.
16	49	Application of amendment made by item 603
17		Subsection 382(1A) of the EPBC Act, as inserted by item 603 of the
18		amending Schedule, applies after the commencement of that item in
19 20		relation to members of Boards, whether appointed before or after the commencement of that item.

2 3	Pa	rt 9—Provisions relating to compliance and enforcement
4 5	50	Amendments do not apply to things seized, or warrants issued, before commencement of amending items
6 7 8 9		Subject to this Part, an item of the amending Schedule that amends or repeals a provision of Part 17 of the EPBC Act does not apply in relation to a thing seized, or a warrant issued, before the commencement of that item.
10	51	Application of amendment made by item 739
11 12		The amendment made by item 739 of the amending Schedule applies to things forfeited, whether before or after the commencement of that item.
13	52	Saving of approvals
14 15 16 17		An approval in force under section 453 of the EPBC Act immediately before the commencement of item 742 of the amending Schedule has effect after that commencement as if it related to organisms and specimens.
	E 2	•
18	55	Application of amendment made by item 763
19 20 21		The amendment made by item 763 of the amending Schedule applies to applications to the Federal Court for an injunction that are made after the commencement of that item.
22	54	Amendments of offence etc. provisions do not apply to
23		actions and omissions that occurred before
24		commencement of amending items
25		An item of the amending Schedule that:
26		(a) amends, repeals, or otherwise affects the scope of a provision
27		of the EPBC Act that is an offence provision or a civil penalty provision; or
28 29		(b) inserts a provision into the EPBC Act that is an offence
30		provision or a civil penalty provision;
31		does not apply to an act or omission that occurred before the
32		commencement of that item.

Pa	art 10—Other provisions
55	Application of amendments made by items 168 and 169
	The amendments made by items 168 and 169 of the amending Schedule do not apply to bilateral agreements entered into before the commencement of those items.
56	Application of amendments made by items 386 etc.
	The amendments made by items 386, 387, 388, 413, 414, 415, 446, 447, 448, 463, 464, 465, 528, 529, 530, 531, 758, 759, 760, 761 and 762 of
	the amending Schedule do not apply in relation to any decision made under the EPBC Act before the commencement of those items.
57	Application of amendments made by items 788 etc.
	The amendments made by items 788, 796, 798, 800, 817, 827 and 834 of the amending Schedule do not affect the validity of any decision
	made or action taken under the EPBC Act, or regulations made under that Act, before the commencement of those items.
58	Regulations may deal with transitional, saving or
	application matters
(1)	The Governor-General may make regulations dealing with matters of a
	transitional, saving or application nature relating to amendments made by this Act.
(2)	Despite subsection 12(2) of the <i>Legislative Instruments Act 2003</i> , regulations made under this item may be expressed to take effect from a date before the regulations are registered under that Act.