



National Environment Protection Measures (Implementation) Act 1998

No. 129, 1998

**An Act to provide for the implementation of
national environment protection measures in
respect of certain activities carried on by or on
behalf of the Commonwealth and Commonwealth
authorities, and for related purposes**

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national environment protection measures in
respect of certain activities carried on by or on
behalf of the Commonwealth and Commonwealth
authorities, and for related purposes**

[Assented to 21 December 1998]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Environment Protection Measures (Implementation) Act 1998*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Objects of Act

The objects of this Act are:

- (a) to make provision for the implementation of national environment protection measures in respect of certain activities carried on by or on behalf of the Commonwealth and Commonwealth authorities; and
- (b) to protect, restore and enhance the quality of the environment in Australia, having regard to the need to maintain ecologically sustainable development; and
- (c) to ensure that the community has access to relevant and meaningful information about pollution.

4 Simplified outline of Act

The following is a simplified outline of the operation of this Act:

State and Territory laws implementing national environment protection measures (*NEPMs*) do not apply to the activities of the Commonwealth or Commonwealth authorities, either of their own force or because of the *Commonwealth Places (Application of Laws) Act 1970* (see section 9).

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Under this Act, the Environment Minister may (subject to considerations of national interest or administrative efficiency):

- apply those State laws to the activities of the Commonwealth or Commonwealth authorities in Commonwealth places (Part 2); or
- apply those State or Territory laws to the activities of the Commonwealth or Commonwealth authorities in other places (Part 3).

If NEPMs are not implemented in relation to the activities of the Commonwealth or Commonwealth authorities under Part 2 or Part 3, they can be implemented:

- by regulations (Part 4); or
- if there are no regulations under Part 4, through environmental audits and environment management plans (Part 5).

The implementation of NEPMs in relation to the activities of the Commonwealth or Commonwealth authorities may be restricted by the Environment Minister in the national interest.

5 Definitions

In this Act, unless the contrary intention appears:

activity means a physical activity that has a direct effect on, or represents a substantial risk of damage to, an aspect of the environment to which a NEPM applies but, to avoid doubt, does not include:

- (a) the formulation of a policy; or
- (b) the making of a decision by a Minister or by a person to whom a Minister has, under an Act or an instrument made or

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having effect under an Act, delegated the power to make the decision.

applied provision means:

- (a) in relation to an applied State law—a provision of that applied State law that applies as mentioned in section 12; or
- (b) in relation to a law of a State or Territory—a provision of that law that applies as mentioned in section 17.

applied State law means a provision of a law of a State that applies in a Commonwealth place under the *Commonwealth Places (Application of Laws) Act 1970*.

carrying on of an activity by the Commonwealth or a Commonwealth authority has a meaning affected by section 7.

coastal waters:

- (a) in relation to a State—means that part of the sea that is included in the coastal waters of the State within the meaning of the *Coastal Waters (State Powers) Act 1980* and includes the airspace over, and the sea-bed and subsoil beneath, that part of that sea; and
- (b) in relation to the Northern Territory—means that part of the sea that is included in the coastal waters of the Territory within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980* and includes the airspace over, and the sea-bed and subsoil beneath, that part of that sea; and
- (c) in relation to an external Territory to which this Act extends—means:
 - (i) the territorial sea adjacent to the external Territory; and
 - (ii) the sea on the landward side of the territorial sea adjacent to the external Territory and not within the limits of the external Territory, including the airspace over, and the sea-bed and subsoil beneath, that sea.

Commonwealth authority means:

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- (a) a body, whether incorporated or not, that is established for a public purpose by or under an Act; or
- (b) a body, whether incorporated or not, that is established by the Governor-General or by a Minister; or
- (c) a body that is:
 - (i) an incorporated company over which the Commonwealth or a body referred to in paragraph (a) or (b) is in a position to exercise control; or
 - (ii) a subsidiary (within the meaning of the Corporations Law) of an incorporated company referred to in subparagraph (i).

Commonwealth place means a place (other than the seat of government) with respect to which the Parliament, under section 52 of the Constitution, has, subject to the Constitution, exclusive power to make laws for the peace, order and good government of the Commonwealth.

continental shelf of Australia has the same meaning as in the *Seas and Submerged Lands Act 1973*.

Department means a Department of State of the Commonwealth.

engaging in conduct includes doing, or omitting to do, anything.

enter, in relation to a vessel or aircraft, includes go on board.

environment includes all aspects of the surroundings of human beings, whether affecting them as individuals or in social groupings.

Environment Minister means the Minister who administers this Act.

Environment Secretary means the Secretary to the Department administered by the Environment Minister.

environmental impact statement includes an environment effects statement, an impact assessment study in relation to the

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environment, and a public environment document, and any similar statement or study.

exclusive economic zone means the exclusive economic zone, within the meaning of the *Seas and Submerged Lands Act 1973*, adjacent to the coast of Australia or the coast of an external Territory to which this Act extends.

external Territory to which this Act extends means an external Territory other than Norfolk Island.

implementation, in relation to a NEPM, includes, but is not limited to:

- (a) if the NEPM incorporates a national environment protection standard—requiring and securing compliance with the standard, including monitoring and reporting on observance of the standard; and
- (b) if the NEPM incorporates a national environment protection goal—encouraging attainment of the goal; and
- (c) if the NEPM incorporates a national environment protection guideline—ensuring that the guideline is taken into account; and
- (d) if the NEPM incorporates a national environment protection protocol—securing compliance with the protocol.

law, in relation to a State or Territory, means:

- (a) a law in force in the State or Territory other than:
 - (i) a law made by a local governing authority (other than a local governing authority that has entered into an arrangement with the Commonwealth for the application of this Act to laws made by the authority); or
 - (ii) a law of the Commonwealth; and
- (b) an instrument made or having effect under a law to which paragraph (a) applies.

law, in relation to a local governing authority, has a meaning affected by section 8.

make a decision includes:

- (a) make, suspend, revoke or refuse to make an order, award or determination; and
- (b) give, suspend, revoke or refuse to give a certificate, direction, approval, consent or permission; and
- (c) issue, suspend, revoke or refuse to issue a licence, authority or other instrument; and
- (d) impose a condition or restriction; and
- (e) make a declaration, demand or requirement; and
- (f) retain, or refuse to deliver up, an article; and
- (g) do or refuse to do anything else.

matter of national interest means:

- (a) a matter concerning:
 - (i) Australia's relations with another country or Australia's international obligations; or
 - (ii) national security; or
 - (iii) national defence; or
 - (iv) a national emergency; or
- (b) a prescribed matter relating to:
 - (i) a telecommunications activity authorised by Division 2, 3 or 4 of Part 1 of Schedule 3 to the *Telecommunications Act 1997*; or
 - (ii) the management of aviation airspace or airports, including aircraft emissions, aircraft noise and on-ground airport management, but not including matters specified in subregulation 1.04(2) of the *Airports (Environment Protection) Regulations*; or
- (c) any other matter agreed between the Commonwealth, the States and the Territories.

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modification, in relation to a provision of an applied State law referred to in subsection 12(4) or a provision of a law of a State or Territory referred to in subsection 17(3) or 21(8) or (9), includes a modification that involves:

- (a) the omission of part of the provision; or
- (b) the addition of a provision; or
- (c) the omission of the provision or part of the provision and the substitution of a different provision.

national environment protection goal means a goal that:

- (a) relates to desired environmental outcomes; and
- (b) guides the formulation of strategies for the management of human activities that may affect the environment.

national environment protection guideline means a guideline that gives guidance on possible means for achieving desired environmental outcomes.

national environment protection protocol means a protocol that relates to the process to be followed in measuring environmental characteristics to determine:

- (a) whether a particular standard or goal is being met or achieved; or
- (b) the extent of the difference between the measured characteristic of the environment and a particular standard or a particular goal.

national environment protection standard means a standard that consists of quantifiable characteristics of the environment against which environmental quality can be assessed.

NEPM means a national environment protection measure in force under subsection 14(1) of the *National Environment Protection Council Act 1994*.

premises includes any place (whether enclosed or built on or not) including a place situated under ground or under water, and, in particular, includes:

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- (a) a building, aircraft, vehicle or vessel; and
- (b) any structure, whether fixed or moveable, and whether on land or the bed of any waters or floating on any waters; and
- (c) a part of premises (including a part of any premises of a kind referred to in paragraph (a) or (b)).

relevant Minister, in relation to activities carried on by the Commonwealth or a Commonwealth authority, means the Minister:

- (a) who administers the Department that is responsible for the carrying on of the activities; or
- (b) who administers the enactment by or under which the Commonwealth authority that is responsible for the carrying on of the activities is established or who is otherwise administratively responsible for the authority's actions;

as the case requires.

responsible officer, in relation to a State or Territory, means the chief executive officer of the Department of the Government of the State or Territory that is responsible for matters relating to the environment.

securing compliance with includes enforcing.

territorial sea means the territorial sea of Australia and includes the airspace over, and the sea-bed and subsoil beneath, that sea.

Territory (except in the expression ***external Territory***) means the Australian Capital Territory, the Northern Territory or the Jervis Bay Territory.

6 Extension to certain external Territories

This Act extends to the external Territories other than Norfolk Island.

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7 Activities carried on by contractors

A reference in this Act to the carrying on of an activity by the Commonwealth or a Commonwealth authority includes a reference to the engaging in of any conduct by another person under a contract entered into by the person with the Commonwealth or the authority in connection with the carrying on of such an activity for or on behalf of the Commonwealth or the authority.

8 Laws made by local governing authorities

To avoid doubt, no Act passed by the Legislative Assembly for the Australian Capital Territory or the Legislative Assembly of the Northern Territory is to be taken, for the purposes of this Act, to be a law made by a local governing authority.

9 Operation of State and Territory laws implementing NEPMs

- (1) A provision of a State law implementing a NEPM that applies in a Commonwealth place in a State because of the operation of the *Commonwealth Places (Application of Laws) Act 1970* does not extend to activities carried on in that place by or on behalf of the Commonwealth or a Commonwealth authority, except to the extent that it so applies under this Act.
- (2) A provision of a State law or a Territory law implementing a NEPM does not extend to activities carried on by or on behalf of the Commonwealth or a Commonwealth authority anywhere other than in a Commonwealth place in a State, except to the extent that it so applies under this Act.

10 Operation of Act in relation to Commonwealth or a Commonwealth authority

Act to bind Commonwealth

- (1) This Act binds the Crown in right of the Commonwealth.

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State officer may report contraventions

- (2) If the responsible officer of a State:
- (a) considers that the Commonwealth, a Commonwealth authority, or an officer or employee of the Commonwealth or of such an authority, may have contravened an applied provision of an applied State law of the State, or an applied provision of a law of the State; and
 - (b) has told the Secretary of the relevant Department or the chief executive officer of the authority, as the case requires, of the circumstances; and
 - (c) has formed the opinion that the Department or authority has not taken appropriate action to deal with the matter and has told the Secretary of the Department or the chief executive officer of the authority that the officer has formed that opinion;
- the officer may report the circumstances in writing to the Environment Secretary.

Territory officer may report contraventions

- (3) If the responsible officer of a Territory:
- (a) considers that the Commonwealth, a Commonwealth authority, or an officer or employee of the Commonwealth or of such an authority, may have contravened an applied provision of a law of the Territory; and
 - (b) has told the Secretary of the relevant Department or the chief executive officer of the authority, as the case requires, of the circumstances; and
 - (c) has formed the opinion that the Department or authority has not taken appropriate action to deal with the matter and has told the Secretary of the Department or the chief executive officer of the authority that the officer has formed that opinion;
- the officer may report the circumstances in writing to the Environment Secretary.

Section 10

Duties of Environment Secretary

- (4) If a report is made under subsection (2) or (3), the Environment Secretary must, within 60 days:
- (a) investigate the circumstances; and
 - (b) if he or she thinks it appropriate to do so:
 - (i) prepare draft recommendations for action to be taken by the relevant Department or authority; and
 - (ii) give written notice to the Secretary of the Department or the chief executive officer of the authority setting out the draft recommendations and asking for comments within a reasonable period stated in the notice; and
 - (c) give the Environment Minister a written report that:
 - (i) is accompanied by the report by the officer of the State or Territory; and
 - (ii) sets out any comments of the Secretary of the relevant Department or chief executive officer of the authority made within the period stated in the notice; and
 - (iii) sets out any action that the Environment Secretary, after considering the comments (if any), recommends should be taken by the Department or authority.

Powers of Environment Minister

- (5) When such a report is given to the Environment Minister, that Minister must, within 60 days:
- (a) if he or she administers the relevant Department, or administers the enactment by or under which the authority is established or is otherwise administratively responsible for the actions of the authority—take any action that he or she thinks appropriate; or
 - (b) otherwise—make any recommendations that he or she thinks appropriate to the Minister who administers the relevant Department, or who administers the enactment by or under which the authority is established or is otherwise administratively responsible for the actions of the authority.

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Ministers to give comments, and report on action, to Environment Minister

- (6) If a recommendation is made to a Minister under paragraph (5)(b), that Minister is to give the Environment Minister within 60 days of receiving the recommendation:
 - (a) his or her comments on the recommendation; and
 - (b) a report as to the action that has been taken, in respect of the matters to which the recommendation relates, since the Secretary of the Department or the chief executive officer of the authority was told of the relevant circumstances.

Section 11

**Part 2—Implementation of NEPMs by extending
the application of certain provisions of
applied State laws to Commonwealth
activities in Commonwealth places**

**11 Part does not apply to certain NEPMs affecting national interest
etc.**

Exclusion of Part in certain circumstances

- (1) This Part does not apply in relation to an applied State law providing for the implementation of a NEPM that is relevant to the carrying on of a particular activity by the Commonwealth or a Commonwealth authority if there is in force a declaration by the Environment Minister stating:
 - (a) that an alternative Commonwealth regime for the implementation of the NEPM in relation to that activity will achieve the environmental outcomes specified in the NEPM; and
 - (b) that the application of that alternative Commonwealth regime is more appropriate than taking any action under this Part:
 - (i) because the activity involves a specified matter of national interest; or
 - (ii) for reasons of administrative efficiency, having regard to the objects of this Act, the *National Environment Protection Council Act 1994* and the principles of ecologically sustainable development.

Environment Minister may make declarations

- (2) The Environment Minister may, by writing, make declarations for the purposes of subsection (1). A copy of a declaration is to be published in the *Gazette*.

Section 12

Declarations to be tabled

- (3) Within 15 sitting days after making a declaration for the purposes of subsection (1), the Minister must cause a copy of the declaration to be tabled in each House of the Parliament.

12 Applied State laws implementing NEPMs to apply to Commonwealth and its authorities

Application of provision of applied State law

- (1) Subject to section 13, if:
- (a) there is in force a declaration by the Environment Minister stating that a particular provision of an applied State law that is applicable in a Commonwealth place is necessary for the implementation of a NEPM; and
 - (b) there is in force a declaration by the Environment Minister stating that it is desirable for the provision to apply to the carrying on of the activity by the Commonwealth or by a particular Commonwealth authority in the Commonwealth place;
- the provision applies, in accordance with its terms, in relation to the carrying on of an activity by the Commonwealth or by the authority in the Commonwealth place.

Environment Minister may make declarations

- (2) The Environment Minister may, by writing, make declarations for the purposes of paragraphs (1)(a) and (b). A copy of a declaration is to be published in the *Gazette*.

Declarations to be tabled

- (3) Within 15 sitting days after making a declaration for the purposes of paragraph (1)(a) or (1)(b), the Minister must cause a copy of the declaration to be tabled in each House of the Parliament.

Section 13

Regulations may modify application of provisions

- (4) In order to ensure that a provision of an applied State law that applies under subsection (1) in relation to the carrying on of an activity by the Commonwealth or a Commonwealth authority can operate effectively in relation to the carrying on of that activity by the Commonwealth or the authority, the regulations may provide that the provision applies subject to modifications set out in the regulations. If the regulations so provide, the provision applies subject to those modifications.

Relevant State to be consulted

- (5) The Environment Minister is to ensure that the appropriate officers of the relevant State are consulted in the preparation of regulations to be made for the purposes of subsection (4).

13 Certain provisions of applied State laws not to apply to Commonwealth and its authorities

Qualification on application of applied State laws

- (1) Section 12 does not have effect so as to:
- (a) alter the purpose for which land may be used if the land had been used for that purpose at any time before the commencement of this Act; or
 - (b) require a licence, permit or other authorisation (however described) for the construction, alteration or demolition of a building or structure, or for the installation, alteration or removal of any plant or equipment, except where the requirement is made for the purpose of implementing a NEPM; or
 - (c) apply a provision whose primary purpose is to regulate the making of decisions about the use of land except to the extent that the provision requires a licence, permit or other authorisation (however described) for the construction, alteration or demolition of a building or structure, or for the

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installation, alteration or removal of any plant or equipment,
for the purpose of implementing a NEPM; or

- (d) require the preparation, before the carrying on or
continuation of an activity, of an environmental impact
statement; or
- (e) provide for the judicial or administrative review, under an
applied State law, of a decision; or
- (f) require the payment of a fee or charge.

Discretion to pay fees or charges

- (2) Paragraph (1)(f) does not affect the operation of section 38.

*Regulations may exclude the application of a provision of an
applied State law*

- (3) The regulations may declare that section 12 is not to apply to a
particular provision of an applied State law, either indefinitely or
for a particular period. If the regulations so declare, that section
does not apply to the provision, or to the provision for that period,
as the case may be.

*Regulations may exclude applied State law from applying in
relation to an activity in all Commonwealth places or a particular
Commonwealth place*

- (4) The regulations may declare that section 12 is not to apply to any
provision, or to a particular provision, of an applied State law in
relation to the carrying on of a particular activity or particular
activities by the Commonwealth, or by a particular Commonwealth
authority, either indefinitely or for a particular period and either in
all Commonwealth places, or in a particular Commonwealth place
or a particular part of a Commonwealth place, in the State. If the
regulations so declare, that section does not apply to the declared
extent.

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Matters to be taken into account in making regulations

- (5) Regulations may only be made for the purposes of subsection (3) or (4) if the Environment Minister is satisfied that it is desirable to make the regulations because of considerations relating to a matter of national interest.

14 Functions and powers of authorities or officers under applied provisions of applied State laws

State authorities or officers may exercise functions and powers

- (1) If:
- (a) a provision of an applied State law confers functions or powers on:
 - (i) an authority of the State other than a local governing authority; or
 - (ii) an officer of the State other than an officer of a local governing authority; and
 - (b) the provision is applied as mentioned in section 12;
- then, subject to section 13, the authority or officer has corresponding functions or powers under the applied provision.

How functions and powers are to be exercised

- (2) In performing a function or exercising a power conferred by subsection (1) in relation to an applied provision of an applied State law, an authority or officer must act as nearly as practicable as the authority or officer would act in performing the same function or exercising the same power under the corresponding provision of the applied State law.

State laws for investigation of offences to apply

- (3) The laws of a State respecting the investigation of offences against an applied State law apply so far as they are applicable to the investigation, by an authority or officer of the State under

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subsection (1), of offences against the applied law, and so apply to the exclusion of the laws of the Commonwealth that would otherwise apply to the investigation of an offence against a Commonwealth law.

Certain Commonwealth laws not affected

- (4) To avoid doubt, subsection (3) does not affect the operation of any of the following laws in relation to offences against an applied State law:
- (a) the *Director of Public Prosecutions Act 1983*;
 - (b) section 21B of the *Crimes Act 1914*;
 - (c) Part IB of the *Crimes Act 1914*;
 - (d) the *Proceeds of Crime Act 1987*.

15 Applied provisions of applied State laws to be interpreted by reference to the relevant State interpretation statute

If a provision of an applied State law is applied as mentioned in section 12:

- (a) any provisions of the applied State laws with respect to the interpretation of the first-mentioned provision have effect for the purposes of that provision as so applied; and
- (b) the *Acts Interpretation Act 1901* does not apply in relation to the applied provision.

Section 16

**Part 3—Implementation of NEPMs by extending
the application of certain provisions of
State or Territory laws to Commonwealth
activities**

**16 Part does not apply to certain NEPMs affecting national interest
etc.**

Exclusion of Part in certain circumstances

- (1) This Part does not apply in relation to a State law or a Territory law providing for the implementation of a NEPM that is relevant to the carrying on of a particular activity by the Commonwealth or a Commonwealth authority if there is in force a declaration by the Environment Minister stating:
 - (a) that an alternative Commonwealth regime for the implementation of the NEPM in relation to that activity will achieve appropriate environmental outcomes; and
 - (b) that the application of that alternative Commonwealth regime is more appropriate than taking any action under this Part:
 - (i) because the activity involves a specified matter of national interest; or
 - (ii) for reasons of administrative efficiency.

Environment Minister may make declarations

- (2) The Environment Minister may, by writing, make declarations for the purposes of subsection (1). A copy of a declaration is to be published in the *Gazette*.

Section 17

Declarations to be tabled

- (3) Within 15 sitting days after making a declaration for the purposes of subsection (1), the Minister must cause a copy of the declaration to be tabled in each House of the Parliament.

17 State or Territory laws implementing NEPMs to apply to Commonwealth and its authorities

Application of provision of State or Territory law

- (1) Subject to section 18, if:
- (a) there is in force a declaration by the Environment Minister stating that a particular provision of a law of a State or Territory is necessary for the implementation of a NEPM; and
 - (b) there is in force a declaration by the Environment Minister stating that it is desirable for the provision to apply to the carrying on of an activity by the Commonwealth or by a particular Commonwealth authority;
- the following paragraphs apply:
- (c) the provision applies, in accordance with its terms, in relation to the carrying on of the activity by the Commonwealth or the authority in the State or Territory or in the coastal waters of the State or Territory;
 - (d) if the provision is in force in an external Territory to which this Act extends—the provision applies, in accordance with its terms, in relation to the carrying on of the activity by the Commonwealth or the authority in the external Territory and the coastal waters of the external Territory.

Environment Minister may make declarations

- (2) The Environment Minister may, by writing, make declarations for the purposes of paragraphs (1)(a) and (b). A copy of a declaration is to be published in the *Gazette*.

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Regulations may modify application of provisions

- (3) In order to ensure that a provision of a law of a State or Territory that applies under subsection (1) in relation to the carrying on of an activity by the Commonwealth or a Commonwealth authority can operate effectively in relation to the carrying on of that activity by the Commonwealth or the authority, the regulations may provide that the provision applies subject to modifications set out in the regulations. If the regulations so provide, the provision applies subject to those modifications.

Relevant State or Territory to be consulted

- (4) The Environment Minister is to ensure that the appropriate officers of the relevant State or Territory are consulted in the preparation of regulations to be made for the purposes of subsection (3).

18 Certain provisions of State or Territory laws not to apply to Commonwealth and its authorities

Qualification on application of State or Territory laws

- (1) Section 17 does not have effect so as to:
- (a) alter the purpose for which land may be used if the land had been used for that purpose at any time before the commencement of this Act; or
 - (b) require a licence, permit or other authorisation (however described) for the construction, alteration or demolition of a building or structure, or for the installation, alteration or removal of any plant or equipment, except where the requirement is made for the purpose of implementing a NEPM; or
 - (c) apply a provision whose primary purpose is to regulate the making of decisions about the use of land except to the extent that the provision requires a licence, permit or other authorisation (however described) for the construction, alteration or demolition of a building or structure, or for the

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- installation, alteration or removal of any plant or equipment, for the purpose of implementing a NEPM; or
- (d) require the preparation, before the carrying on or continuation of an activity, of an environmental impact statement; or
 - (e) confer any judicial power; or
 - (f) provide for the judicial or administrative review, under a law of a State or Territory, of a decision; or
 - (g) impose a tax; or
 - (h) require the payment of a fee or charge.

Discretion to pay fees or charges

- (2) Paragraph (1)(h) does not affect the operation of section 38.

Regulations may exclude the application of a provision of a State or Territory law

- (3) The regulations may declare that section 17 is not to apply to a particular provision of a law of a State or Territory, either indefinitely or for a particular period. If the regulations so declare, that section does not apply to the provision, or to the provision for that period, as the case may be.

Regulations may exclude State or Territory law from applying in relation to an activity in, or in a part of, the State or Territory

- (4) The regulations may declare that section 17 is not to apply to any provision, or to a particular provision, of a law of a State or Territory in relation to the carrying on of a particular activity or particular activities by the Commonwealth, or by a particular Commonwealth authority, either indefinitely or for a particular period and either in, or in a particular part of, the State or Territory. If the regulations so declare, that section does not apply to the declared extent.

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Matters to be taken into account in making regulations

- (5) Regulations may only be made for the purposes of subsection (3) or (4) if the Environment Minister is satisfied that it is desirable to make the regulations because of considerations relating to a matter of national interest.

19 Functions and powers of authorities or officers under applied provisions of State or Territory laws

State authorities or officers may exercise functions or powers

- (1) If:
 - (a) a provision of a law of a State or Territory confers functions or powers on:
 - (i) an authority of the State or Territory other than a local governing authority; or
 - (ii) an officer of the State or Territory other than an officer of a local governing authority; and
 - (b) the provision is applied as mentioned in section 17;then, subject to section 18, the authority or officer has corresponding functions or powers under the applied provision.

How functions or powers are to be exercised

- (2) In performing a function or exercising a power conferred by subsection (1) in relation to an applied provision of a law of a State or Territory, an authority or officer must act as nearly as practicable as the authority or officer would act in performing the same function or exercising the same power under the corresponding provision of the law of the State or Territory.

State or Territory laws for investigation of offences to apply

- (3) The laws of a State or Territory respecting the investigation of offences against an applied provision of a law of a State or Territory apply so far as they are applicable to the investigation, by

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an authority or officer of the State or Territory under subsection (1), of offences against the applied provision, and so apply to the exclusion of the laws of the Commonwealth that would otherwise apply to the investigation of an offence against a Commonwealth law.

Commonwealth laws not affected

- (4) To avoid doubt, subsection (3) does not affect the operation of any of the following laws in relation to offences against an applied State or Territory law:
- (a) the *Director of Public Prosecutions Act 1983*;
 - (b) section 21B of the *Crimes Act 1914*;
 - (c) Part IB of the *Crimes Act 1914*;
 - (d) the *Proceeds of Crime Act 1987*.

20 Applied provisions of State or Territory laws to be interpreted by reference to the relevant State or Territory interpretation statute

If a provision of a law of a State or Territory is applied as mentioned in section 17:

- (a) any provisions of the laws of the State or Territory with respect to the interpretation of the first-mentioned provision have effect for the purposes of that provision as so applied; and
- (b) the *Acts Interpretation Act 1901* does not apply in relation to the applied provision.

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Part 4—Implementation of NEPMs by the making of appropriate regulations

21 NEPMs may be implemented by regulations

Circumstances to which Part applies

- (1) This Part applies for the purposes of the implementation of a NEPM in relation to an activity carried on by the Commonwealth or a Commonwealth authority if the Environment Minister becomes satisfied that:
 - (a) the NEPM is relevant to the carrying on of the activity; and
 - (b) the activity is carried on in a place (the **relevant place**) referred to in any of the following subparagraphs:
 - (i) a Commonwealth place in which, in the Environment Minister's opinion, the NEPM is not being implemented, or satisfactorily implemented, under an applied State law of the State in which the Commonwealth place is situated;
 - (ii) a State or Territory, or the coastal waters of a State or Territory, in which, in the Environment Minister's opinion, the NEPM is not being implemented, or satisfactorily implemented, under a law of the State or Territory;
 - (iii) a Commonwealth place in a State, where a provision of a law of the State for the implementation of the NEPM that applies in the Commonwealth place under the *Commonwealth Places (Application of Laws) Act 1970* is not, and is not to be, applied under Part 2 in relation to the carrying on of the activity;
 - (iv) a State or Territory or the coastal waters of a State or Territory, where a provision of a law of the State or Territory for the implementation of the NEPM is not,

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- and is not to be, applied under Part 3 in relation to the carrying on of the activity;
- (v) an external Territory to which this Act extends or its coastal waters;
 - (vi) a part of the territorial sea of Australia that is not part of the coastal waters of a State or Territory;
 - (vii) a part of the exclusive economic zone;
 - (viii) a part of any area of the continental shelf of Australia that is beyond the limits of the exclusive economic zone; and
- (c) the NEPM is not, and is not to be, implemented in relation to the carrying on of the activity by another law of the Commonwealth in a way that the Environment Minister is satisfied will achieve appropriate environmental outcomes.

Part may be excluded by regulation

- (2) This Part does not apply for the purposes of the implementation of a NEPM in relation to an activity if the activity is excluded, under the regulations, from the application of this Part for the purposes of the implementation of the NEPM.

Period of exclusion

- (3) Regulations made for the purposes of subsection (2) may exclude an activity for the purposes of the application of a NEPM:
- (a) indefinitely or for a particular period; and
 - (b) either wherever the activity is carried on or in a particular place where the activity is carried on.

Exclusion only if required by matter of national interest

- (4) Regulations may only be made for the purposes of subsection (2) if the Environment Minister is satisfied that it is desirable to make the regulations because of considerations relating to a matter of national interest.

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Regulations may implement NEPM

- (5) The regulations may make provision for or in relation to the implementation of a NEPM in respect of the carrying on of an activity by the Commonwealth or a Commonwealth authority, including provision for penalties for offences against the regulations.

Maximum penalty for contravention of regulations

- (6) The penalty for a contravention of the regulations must not exceed (except in the circumstances mentioned in subsection (9)):
- (a) if the contravention causes or is likely to cause, whether directly or indirectly, harm to the environment (irrespective of the duration of the harm):
 - (i) in respect of a contravention by an individual—2,000 penalty units; or
 - (ii) in respect of a contravention by a corporation—10,000 penalty units; or
 - (b) otherwise:
 - (i) in respect of a contravention by an individual—500 penalty units; or
 - (ii) in respect of a contravention by a corporation—2,500 penalty units.

When contravention is taken to harm the environment

- (7) If harm to the environment is caused, or is likely to be caused, by a combination of a contravention of the regulations and any other factor or factors, the harm is taken for the purposes of paragraph (6)(a) to be caused, or to be likely to be caused, as the case may be, by the contravention.

Regulations implementing NEPM may apply State or Territory law

- (8) The provision for the implementation of a NEPM that may be made under subsection (5) in respect of an activity may include the

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application, with or without modifications, of provisions of a law of any State or Territory as in force at a particular time or as in force from time to time, even if the activity is not carried on in that State or Territory.

Regulations applying State or Territory law may apply penalties

- (9) The provisions of a law of a State or Territory that may be applied by regulations as mentioned in subsection (8) may include provisions of that law imposing penalties for offences against the provisions so applied, but any modifications of those provisions made by the regulations must not increase those penalties.

Part 5—Implementation of NEPMs by environmental audits and environment management plans

Division 1—Preliminary

22 Meaning of *environmental auditor*

In this Part:

environmental auditor has the meaning given by section 26.

23 Activities in relation to which this Part applies

Circumstances in which Part applies

- (1) Subject to this section, Divisions 2 and 3 apply for the purposes of the implementation of a NEPM in relation to an activity carried on by the Commonwealth or a Commonwealth authority if the Environment Minister becomes satisfied that:
 - (a) the NEPM is relevant to the carrying on of the activity; and
 - (b) the activity is carried on in a place (the *relevant place*) referred to in any of the following subparagraphs:
 - (i) a Commonwealth place in which, in the Environment Minister's opinion, the NEPM is not being implemented, or satisfactorily implemented, under an applied State law of the State in which the Commonwealth place is situated;
 - (ii) a State or Territory, or the coastal waters of a State or Territory, in which, in the Environment Minister's opinion, the NEPM is not being implemented, or satisfactorily implemented, under a law of the State or Territory;

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- (iii) a Commonwealth place in a State, where a provision of a law of the State for the implementation of the NEPM that applies in the Commonwealth place under the *Commonwealth Places (Application of Laws) Act 1970* is not, and is not to be, applied under Part 2 in relation to the carrying on of the activity;
- (iv) a State or Territory or the coastal waters of a State or Territory, where a provision of a law of the State or Territory for the implementation of the NEPM is not, and is not to be, applied under Part 3 in relation to the carrying on of the activity;
- (v) an external Territory to which this Act extends or its coastal waters;
- (vi) a part of the territorial sea of Australia that is not part of the coastal waters of a State or Territory;
- (vii) a part of the exclusive economic zone;
- (viii) a part of any area of the continental shelf of Australia that is beyond the limits of the exclusive economic zone; and
- (c) the NEPM is not, and is not to be, implemented in relation to the carrying on of the activity:
 - (i) by regulations under Part 4; or
 - (ii) by another law of the Commonwealth in a way that the Environment Minister is satisfied will achieve appropriate environmental outcomes.

Provisions of Part may be excluded by regulation

- (2) Division 2 or 3, or a provision of Division 2 or 3, does not apply for the purposes of the implementation of a NEPM in relation to an activity if the activity is excluded, under the regulations, from the application of the Division or provision, as the case may be, for the purposes of the implementation of the NEPM.

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Period of exclusion

- (3) Regulations made for the purposes of subsection (2) may exclude an activity for the purposes of the implementation of a NEPM:
- (a) indefinitely or for a particular period; and
 - (b) either wherever the activity is carried on or in a particular place where the activity is carried on.

Exclusion only if required by matter of national interest

- (4) Regulations may only be made for the purposes of subsection (2) if the Environment Minister is satisfied that it is desirable to make the regulations because of considerations relating to a matter of national interest.

Notice of application of provisions to be given to relevant Minister

- (5) If all or any of the provisions of Divisions 2 and 3 apply for the purposes of the implementation of a NEPM in relation to an activity carried on by the Commonwealth or a Commonwealth authority, the Environment Minister must notify the relevant Minister accordingly.

Provisions to apply when notice received by relevant Minister

- (6) If the relevant Minister is so notified, those provisions (other than any provisions that afterwards cease to apply because of regulations made for the purposes of subsection (2) after the notification) have effect for the purposes of the implementation of the NEPM in relation to the activity.

Division 2—Environmental audits

24 Relevant Minister to arrange for carrying out of environmental audit

- (1) The relevant Minister must arrange for an environmental audit to be carried out for the purposes of the implementation of the NEPM with respect to the carrying on by the Commonwealth or the Commonwealth authority of the activities.
- (2) The relevant Minister must ensure that the audit is begun within 90 days after he or she is told by the Environment Minister that this Division applies in relation to the activities for the purposes of the implementation of the NEPM.

25 Environmental auditors

- (1) Subject to sections 26 and 27, the relevant Minister may appoint any person (the *environmental auditor*) to carry out an environmental audit for the purposes of this Act.
- (2) The regulations may make provision for the accreditation of environmental auditors.

26 Environmental auditor not to be officer or employee of the relevant Minister's Department or to be employed by the relevant Commonwealth authority

The person (the *environmental auditor*) appointed to carry out the environmental audit must be a person who is not an officer of, or employed in, the Department administered by the relevant Minister or is not employed by the Commonwealth authority, as the case may be.

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27 Environmental auditor to be a fit and proper person

- (1) A person must not be appointed as an environmental auditor unless the relevant Minister is satisfied that the person is a fit and proper person.
- (2) In deciding whether a person is a fit and proper person, the relevant Minister must have regard to:
 - (a) any conviction of the person, or any body corporate of which the person is a director, for contravention of any Australian environment protection or related law; and
 - (b) any suspension or revocation of any licence or other authority held by the person, or any body corporate of which the person is a director, under any Australian environment protection or related law.
- (3) A person's appointment as an environmental auditor must be revoked if:
 - (a) the person, or a body corporate of which the person is a director, is convicted for a contravention of any Australian environment protection or related law; or
 - (b) any licence or authority held by the person, or a body corporate of which the person is a director, under any Australian environment protection or related law is suspended or revoked.

28 Nature of environmental audit

- (1) The environmental audit for the purposes of the implementation of the NEPM is to consist of:
 - (a) an evaluation of the nature of the environment that is or will be affected by the activities; and
 - (b) an assessment of the risks to the environment resulting from the activities; and
 - (c) an assessment of the existing capacity of the Commonwealth or the Commonwealth authority to comply with the NEPM in carrying on the activities; and
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- (d) an assessment of what the Commonwealth or the Commonwealth authority will need to do in order so to comply.
- (2) In carrying out the environmental audit, the environmental auditor may, if:
 - (a) an environmental audit relating to the implementation of the NEPM was completed within the preceding 2 years; and
 - (b) the environmental auditor is satisfied that the previous environmental audit is still relevant;have regard to the results of the previous audit.
- (3) If:
 - (a) the environmental auditor is carrying out the environmental audit; and
 - (b) in the course of carrying out the audit, the environmental auditor conceals, or fails to take into account, any information or document; and
 - (c) the information or document is relevant to the audit;the environmental auditor is guilty of an offence punishable on conviction by imprisonment for not more than 6 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

29 Report by environmental auditor

- (1) After completing the environmental audit, the environmental auditor must prepare, and give the relevant Minister and the Environment Minister, a written report setting out:
 - (a) the auditor's qualifications and experience; and

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(b) the results of the audit.

(2) If:

(a) the environmental auditor includes a statement in the report;
and

(b) the statement is false or misleading in a material particular;
the environmental auditor is guilty of an offence punishable on conviction by imprisonment for not more than 6 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Division 3—Environment management plans

30 Environment management plan

- (1) As soon as practicable after receiving the report of the environmental auditor, the relevant Minister must arrange for the Department or the Commonwealth authority that is carrying on, or proposes to carry on, activities relevant to the NEPM to cause an environment management plan to be prepared with respect to the carrying on of the activities.
- (2) The Secretary of that Department, or the chief executive officer of that authority, as the case may be, must appoint an officer of that Department, or a person employed by that authority, to be the environment manager for the purposes of the environment management plan.

31 Matters to be dealt with in environment management plan

- (1) An environment management plan in respect of activities relevant to the NEPM must include the matters set out in subsection (2) and must have regard to the objects of this Act and the *National Environment Protection Council Act 1994*.
- (2) The matters referred to in subsection (1) are as follows:
 - (a) the objectives of the plan;
 - (b) the activities to which the plan relates;
 - (c) how the NEPM is to be implemented and a timetable for implementation;
 - (d) if the NEPM relates to ambient environmental quality, how the activities will be carried on so as to give effect to the NEPM;
 - (e) appropriate performance indicators at designated intervals;

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- (f) appropriate provision for the participation of, and for consultation with, the community in the development of the plan;
- (g) provision for monitoring and reporting on the implementation of the plan;
- (h) provision for any necessary up-grading of the manner in which the activities are, or are to be, carried out, and the equipment used, or to be used, in the carrying out of the activities, for the purpose of meeting the objectives of the plan;
- (i) provision for action to be taken in a contingency or emergency.

32 Duties of environment manager

- (1) The duties of the environment manager in relation to an environment management plan are:
 - (a) to cause a preliminary plan to be prepared; and
 - (b) to give copies of the preliminary plan to the relevant Minister and the Environment Minister; and
 - (c) if either of them gives the environment manager any comments on the preliminary plan within a reasonable period—to take the comments into account in the preparation of the final plan; and
 - (d) to cause a final plan to be prepared and to give copies of it to the relevant Minister and the Environment Minister; and
 - (e) to ensure, to the maximum extent practicable, that the plan is not contravened; and
 - (f) unless the regulations otherwise provide, to cause copies of the plan to be made available for inspection, and for purchase at a reasonable price, by members of the public.
 - (2) Regulations may only be made for the purposes of paragraph (1)(f) if the Environment Minister is satisfied that it is desirable to make the regulations because of considerations relating to a matter of national interest.
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- (3) If:
- (a) after a final environment management plan has been prepared, a further NEPM comes into force; or
 - (b) a period of 3 years has elapsed since a final environment management plan was prepared or last revised;
- the plan is to be revised for the purpose of giving effect to the NEPMs that apply to matters to which the plan relates.

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**Part 6—Ensuring implementation of NEPMs under
Parts 4 and 5**

**33 Relevant Minister responsible for adequate implementation of a
NEPM in respect of an activity to which Part 4 or 5
applies**

- (1) This section applies to activities carried on by the Commonwealth or a Commonwealth authority in respect of which:
 - (a) a regulation made for the purposes of Part 4 applies; or
 - (b) an environment management plan prepared under Part 5 applies;for the purpose of implementing a NEPM.
- (2) The relevant Minister must do everything necessary to ensure that the NEPM is adequately implemented in respect of the activities.
- (3) If:
 - (a) the Environment Minister is not the relevant Minister; and
 - (b) the Environment Minister forms the opinion that the NEPM is not being adequately implemented in respect of the activities;the Environment Minister may request the relevant Minister to give the Environment Minister a written report setting out:
 - (c) the reasons (including any mitigating circumstances) for the inadequate implementation; and
 - (d) the action that the relevant Minister intends to take to ensure adequate implementation; and
 - (e) the period that the relevant Minister thinks necessary for the taking of the action.
- (4) If, after such period following the making of the request as the Environment Minister thinks reasonable, he or she is satisfied that

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the NEPM has not been adequately implemented in respect of the activities, he or she may make a written declaration to that effect.

- (5) If the Environment Minister makes such a declaration, he or she is to cause a copy of the declaration to be published in the *Gazette*.

Part 7—Administrative and judicial review

34 Review of decisions by Administrative Appeals Tribunal

- (1) Application may be made to the Administrative Appeals Tribunal for review of any reviewable decision made under:
 - (a) an applied provision of an applied State law; or
 - (b) an applied provision of a law of a State or Territory; or
 - (c) a provision of a regulation made for the purposes of Part 4; or
 - (d) Part 5.
- (2) In subsection (1):

reviewable decision, in relation to an applied provision referred to in paragraph (1)(a) or (b), a provision of a regulation referred to in paragraph (1)(c) or a provision of Part 5, means:

 - (a) if the regulations provide that any decision made under the provision is a reviewable decision—any decision made under the provision; or
 - (b) if the regulations provide that a decision of a kind described in the regulations that is made under the provision is a reviewable decision—any decision of that kind made under the provision.
- (3) This section has effect subject to the *Administrative Appeals Tribunal Act 1975*.

35 Civil jurisdiction of Federal Court

- (1) Jurisdiction is conferred on the Federal Court of Australia with respect to all civil matters arising under:
 - (a) an applied provision of an applied State law; or
 - (b) an applied provision of a law of a State or Territory; or
 - (c) a regulation made for the purposes of Part 4; or

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- (d) Part 5.
- (2) The jurisdiction of the Federal Court of Australia under subsection (1) is, subject to the Constitution and the *Jurisdiction of Courts (Cross-vesting) Act 1987*, exclusive of the jurisdiction of any other court.

Part 8—Miscellaneous

36 Person entering or searching premises occupied by Commonwealth or Commonwealth authority not to disclose information obtained from entry or search

Information not to be disclosed

(1) If:

- (a) a person (the *first person*) enters or searches premises; and
- (b) the entry or search is made under a power that the first person has:
 - (i) because of the operation of section 12 or 17; or
 - (ii) because of regulations made under section 21; and
- (c) the first person discloses any information, directly or indirectly, to another person; and
- (d) the information was acquired by the first person as a result of the entry or search;

the first person is guilty of an offence punishable on conviction by imprisonment for not more than 2 years.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Exception

- (2) Subsection (1) does not apply to a disclosure made in the performance of duties under an applied provision of an applied

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State law, under an applied provision of a law of a State or Territory or under regulations made under section 21.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Court not to require production of document or disclosure of information

- (3) A person who enters or searches premises under a power that the person has because of the operation of section 12 or 17 or because of regulations made under section 21 cannot, except for the purposes of an applied provision of an applied State law, an applied provision of a law of a State or Territory or a provision of the regulations, be required:
- (a) to produce in court any document that has come into his or her possession or under his or her control as a result of the entry or search; or
 - (b) to disclose to a court any information acquired by the person as a result of the entry or search.

Definitions

- (4) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

disclose, in relation to information, means give or communicate in any way.

37 Restriction of entry into or search of exempt premises

Declaration of exempt premises

- (1) Subject to subsection (2), the regulations may declare premises described in the regulations to be ***exempt premises*** for the purposes of this section.

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National interest to be criterion for exemption

- (2) Regulations may only be made for the purposes of subsection (1) in relation to premises if the Environment Minister is satisfied that, because of a matter of national interest, it is desirable that entry into, or search of, the premises under an applied provision of an applied State law, an applied provision of a law of a State or Territory or a regulation made under section 21 be prohibited or restricted.

Orders prohibiting entry into exempt premises

- (3) The Environment Minister may, by order published in the *Gazette*, prohibit or restrict, either absolutely or subject to conditions stated in the order, people who have the power to enter or search premises:
- (a) because of the operation of section 12 or 17; or
 - (b) because of regulations made under section 21;
- from entering or searching exempt premises referred to in the order.

Order to be disallowable

- (4) An order made under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Offence

- (5) If:
- (a) a person enters or searches premises; and
 - (b) the entry or search is made under a power that the person has:
 - (i) because of the operation of section 12 or 17; or
 - (ii) because of regulations made under section 21; and
 - (c) the premises are exempt premises; and
 - (d) the entry or search contravenes:
 - (i) an order in force under subsection (3); or
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(ii) a condition to which such an order is subject;
the person is guilty of an offence punishable on conviction by imprisonment for not more than 2 years.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

38 Commonwealth or Commonwealth authority may pay certain fees and charges

Fees or charges for carrying on activities in Commonwealth places

- (1) The Commonwealth or a Commonwealth authority may pay to a State, or to a State authority, a fee or charge which, if paragraph 13(1)(f) had not been enacted, would have been payable by the Commonwealth or the authority under an applied provision of an applied State law in respect of an application for, or a grant of, a licence, permit or other authorisation (however described) relating to an activity carried on, or to be carried on, by the Commonwealth or the authority in a Commonwealth place in the State.

Fees or charges for carrying on activities in States or Territories

- (2) The Commonwealth or a Commonwealth authority may pay to a State or Territory, or to a State or Territory authority, a fee or charge which, if paragraph 18(1)(h) had not been enacted, would have been payable by the Commonwealth or the authority under an applied provision of a law of the State or Territory in respect of an application for, or a grant of, a licence, permit or other authorisation (however described) relating to an activity carried on,

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or to be carried on, by the Commonwealth or the authority in the State or Territory or in its coastal waters.

39 Arrangements with States and Territories

- (1) The Environment Minister may make an arrangement with:
 - (a) an appropriate Minister of a State in relation to the exercise of a power or the performance of a duty or function by, or by an officer of, the State or an authority of the State under an applied provision of an applied State law or under an applied provision of a law of the State; or
 - (b) an appropriate Minister of a Territory in relation to the exercise of a power or the performance of a duty or function by, or by an officer of, the Territory or an authority of the Territory under an applied provision of a law of the Territory.
- (2) If an arrangement is in force under subsection (1), the power, duty or function may be, or is to be, as the case may be, exercised or performed by the officer or authority accordingly.
- (3) The Environment Minister may make an arrangement (including a financial arrangement) with an appropriate Minister of a State or Territory with respect to any matter necessary or convenient for the purpose of carrying out or giving effect to this Act.
- (4) Without limiting the generality of subsections (1), (2) and (3), an arrangement may contain any supplementary or incidental provisions that the Environment Minister and the Minister of the State or Territory think necessary.
- (5) The Environment Minister may arrange with a Minister of a State or Territory with whom an arrangement is in force under this section for the variation or revocation of the arrangement.

40 Annual reports

- (1) If, in the year ending on 30 June 1998 or in a later year ending on 30 June, a Department or Commonwealth authority is responsible
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for the carrying on of an activity to which a NEPM applies, the Minister:

- (a) who administers the Department; or
- (b) who administers the enactment by or under which the authority is established or is otherwise administratively responsible for the actions of the authority;

must prepare in respect of the year concerned, and give to the Environment Minister within one month after the end of that year, a report, in the prescribed form and containing the prescribed information, as to the implementation of NEPMs by the Department or authority.

- (2) The Environment Minister must, as soon as practicable after each 30 June, cause to be laid before each House of the Parliament a report as to the implementation of NEPMs by the Commonwealth and Commonwealth authorities in the year that ended on that 30 June.
- (3) The first report under subsection (2) is to relate to the year that ends on 30 June 1998.

41 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences referred to in subsection 21(5) and all offences against Parts 5 and 8.

42 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

43 Review of operation of Act

- (1) The Environment Minister must cause an independent review of:
 - (a) the operation of this Act; and
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- (b) the extent to which the policy objectives of this Act remain valid; and
 - (c) whether the provisions of this Act remain appropriate for the achievement of those policy objectives;
- to be undertaken as soon as possible after the fifth anniversary of the commencement of this Act.
- (2) A person who undertakes such a review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 12 months after the fifth anniversary of the commencement of this Act.
- (4) In this section:
 - independent review*** means a review undertaken by persons who:
 - (a) in the Environment Minister's opinion possess appropriate qualifications to undertake the review; and
 - (b) include one or more persons who are not employed by the Commonwealth or a Commonwealth authority and have not, since the commencement of the Act, provided services to the Commonwealth or a Commonwealth authority under or in connection with a contract.

[Minister's second reading speech made in—
Senate on 25 November 1998
House of Representatives on 10 December 1998]

(186/98)
