Environment Protection and Biodiversity Conservation Act 1999

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Volume 1:	**sections 1–266**
Volume 2:	sections 266B–528 Schedule Endnotes

Each volume has its own contents

This compilation includes commenced amendments made by Act No. 59, 2015

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Environment Protection and Biodiversity Conservation Act 1999* that shows the text of the law as amended and in force on 1 July 2016 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

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If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

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For more information about any editorial changes made in this compilation, see the endnotes.

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If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 1—Preliminary 1

Part 1—Preliminary 1

1 Short title 1
2 Commencement 1
3 Objects of Act 1
3A Principles of ecologically sustainable development 3
4 Act to bind Crown 4
5 Application of Act 4
6 Extended application of Act to match extended management of fisheries under the *Fisheries Management Act 1991* 6
7 Application of the *Criminal Code* 8
8 Native title rights not affected 8
9 Relationship with other Acts 8
10 Relationship with State law 9

Chapter 2—Protecting the environment 10

Part 2—Simplified outline of this Chapter 10

11 Simplified outline of this Chapter 10

Part 3—Requirements for environmental approvals 11

Division 1—Requirements relating to matters of national environmental significance 11

Subdivision A—World Heritage 11

12 Requirement for approval of activities with a significant impact on a declared World Heritage property 11
13 What is a *declared World Heritage property*? 12
14 Declaring a property to be a declared World Heritage property 12
15 Amending or revoking a declaration of a declared World Heritage property 15
15A Offences relating to declared World Heritage properties 15

Subdivision AA—National Heritage 17

15B Requirement for approval of activities with a significant impact on a National Heritage place 17
15C Offences relating to National Heritage places 19

Subdivision B—Wetlands of international importance 25

Authorised Version C2016C00777 registered 12/07/2016

16 Requirement for approval of activities with a significant impact on a declared Ramsar wetland 25
17 What is a *declared Ramsar wetland*? 26
17A Making and revoking declarations of wetlands 26
17B Offences relating to declared Ramsar wetlands 28
Subdivision C—Listed threatened species and communities 29
18 Actions with significant impact on listed threatened species or endangered community prohibited without approval 29
18A Offences relating to threatened species etc. 31
19 Certain actions relating to listed threatened species and listed threatened ecological communities not prohibited 33
Subdivision D—Listed migratory species 34
20 Requirement for approval of activities with a significant impact on a listed migratory species 34
20A Offences relating to listed migratory species 34
20B Certain actions relating to listed migratory species not prohibited 36
Subdivision E—Protection of the environment from nuclear actions 36
21 Requirement for approval of nuclear actions 36
22 What is a *nuclear action*? 37
22A Offences relating to nuclear actions 39
Subdivision F—Marine environment 41
23 Requirement for approval of activities involving the marine environment 41
24 What is a *Commonwealth marine area*? 44
24A Offences relating to marine areas 44
Subdivision FA—Great Barrier Reef Marine Park 49
24B Requirement for approval of activities in the Great Barrier Reef Marine Park 49
24C Offences relating to Great Barrier Reef Marine Park 50
Subdivision FB—Protection of water resources from coal seam gas development and large coal mining development 53
24D Requirement for approval of developments with a significant impact on water resources 53
24E Offences relating to water resources 55
Subdivision G—Additional matters of national environmental significance 57

Authorised Version C2016C00777 registered 12/07/2016

25 Requirement for approval of prescribed actions 57

Subdivision H—Actions that are taken to be covered by this Division 59

25A Actions that are taken to be covered by this Division 59

Subdivision HA—Limitation on liability for actions of third parties 60

25AA Limitation on liability for actions of third parties 60

Subdivision I—Evidentiary certificates 62

25B Evidentiary certificates 62

25C Certificate to be given to person 63

25D Evidentiary effect of certificate 63

25E Variation of certificate 63

25F Revocation of certificate 63

Division 2—Protection of the environment from proposals involving the Commonwealth 65

Subdivision A—Protection of environment from actions involving Commonwealth land 65

26 Requirement for approval of activities involving Commonwealth land 65

27 What is *Commonwealth land*? 66

27A Offences relating to Commonwealth land 66

Subdivision AA—Protection of Commonwealth Heritage places outside the Australian jurisdiction 69

27B Requirement for approval of actions with significant impact on Commonwealth Heritage places overseas 69

27C Offences relating to Commonwealth Heritage places overseas 69

Subdivision B—Protection of the environment from Commonwealth actions 71

28 Requirement for approval of activities of Commonwealth agencies significantly affecting the environment 71

Subdivision C—Actions that are taken to be covered by this Division 73

28AA Actions that are taken to be covered by this Division 73

Subdivision D—Limitation on liability for actions of third parties 74

28AB Limitation on liability for actions of third parties 74

Authorised Version C2016C00777 registered 12/07/2016

Part 4—Cases in which environmental approvals are not needed 75

Division 1—Actions covered by bilateral agreements 75

29 Actions declared by agreement not to need approval 75
30 Extended operation in State and Northern Territory waters 76
31 Extended operation in non-self-governing Territories 76

Division 2—Actions covered by Ministerial declarations and accredited management arrangements or accredited authorisation processes 78

Subdivision A—Effect of declarations 78

32 Actions declared by Minister not to need approval 78

Subdivision B—Making declarations 79

33 Making declaration that actions do not need approval under Part 9 79
34 What is *matter protected* by a provision of Part 3? 83

Subdivision C—Prerequisites for making declarations 86

34A Minister may only make declaration if prescribed criteria are met 86
34B Declarations relating to declared World Heritage properties 86
34BA Declarations relating to National Heritage places 87
34C Declarations relating to declared Ramsar wetlands 87
34D Declarations relating to listed threatened species and ecological communities 88
34E Declarations relating to migratory species 89
34F Declarations relating to Commonwealth Heritage places 90

Subdivision D—Other rules about declarations 91

35 Revoking declarations 91
36 Other rules about declarations 91
36A Minor amendments of accredited management arrangement or accredited authorisation process 92

Division 3—Actions covered by Ministerial declarations and bioregional plans 94

Subdivision A—Effect of declarations 94

37 Actions declared by Minister not to need approval 94

Subdivision B—Making declarations 94

37A Making declarations that actions do not need approval under Part 9 94

Authorised Version C2016C00777 registered 12/07/2016

Subdivision C—Prerequisites for making declarations 95
37B General considerations 95
37C Minister may make declaration only if prescribed criteria are met 95
37D Declarations relating to declared World Heritage properties 95
37E Declarations relating to National Heritage places 96
37F Declarations relating to declared Ramsar wetlands 96
37G Declarations relating to listed threatened species and ecological communities 97
37H Declarations relating to listed migratory species 97
37J No declarations relating to nuclear actions 98
Subdivision D—Other rules about declarations 98
37K Revoking declarations 98
37L Other rules about declarations 98
Division 3A—Actions covered by conservation agreements 100
37M Actions declared by conservation agreement not to need approval 100
Division 4—Forestry operations in certain regions 101
Subdivision A—Regions covered by regional forest agreements 101
38 Part 3 not to apply to certain RFA forestry operations 101
Subdivision B—Regions subject to a process of negotiating a regional forest agreement 101
39 Object of this Subdivision 101
40 Forestry operations in regions not yet covered by regional forest agreements 102
41 What is an *RFA region*? 103
Subdivision C—Limits on application 104
42 This Division does not apply to some forestry operations 104
Division 5—Actions in the Great Barrier Reef Marine Park 105
43 Actions taken in accordance with zoning plan 105
Division 6—Actions with prior authorisation 106
43A Actions with prior authorisation 106
43B Actions which are lawful continuations of use of land etc. 107

Authorised Version C2016C00777 registered 12/07/2016

Chapter 3—Bilateral agreements 108

Part 5—Bilateral agreements 108

Division 1—Object of Part 108

44 Object of this Part ... 108

Division 2—Making bilateral agreements 109

Subdivision A—Power to make bilateral agreements 109

45 Minister may make agreement ... 109

46 Agreement may declare actions do not need approval under Part 9 ... 110

47 Agreement may declare classes of actions do not need assessment ... 115

48 Other provisions of bilateral agreements ... 116

48A Mandatory provisions ... 117

49 Certain limits on scope of bilateral agreements ... 119

Subdivision B—Prerequisites for making bilateral agreements 119

49A Consultation on draft agreement ... 119

50 Minister may only enter into agreement if prescribed criteria are met ... 120

51 Agreements relating to declared World Heritage properties ... 120

51A Agreements relating to National Heritage places ... 121

52 Agreements relating to declared Ramsar wetlands ... 121

53 Agreements relating to listed threatened species and ecological communities ... 122

54 Agreements relating to migratory species ... 123

55 Agreements relating to nuclear actions ... 124

56 Agreements relating to prescribed actions ... 125

Subdivision C—Minor amendments of bilateral agreements 125

56A Ministerial determination of minor amendments to bilateral agreements ... 125

Division 3—Suspending and ending the effect of bilateral agreements 127

Subdivision A—Suspension and cancellation of effect 127

57 Representations about suspension or cancellation ... 127

58 Consultation before cancellation or suspension ... 128

59 Suspension or cancellation ... 128

60 Emergency suspension of effect of bilateral agreement ... 130

61 Cancellation during suspension ... 131

Authorised Version C2016C00777 registered 12/07/2016

62 Revocation of notice of suspension or cancellation 131
63 Cancellation or suspension at request of other party 132
64 Cancellation or suspension of bilateral agreement does not affect certain actions 133
Subdivision B—Expiry of bilateral agreements 134
65 Expiry and review of bilateral agreements 134
65A Expiry of bilateral agreement does not affect certain actions 134
Chapter 4—Environmental assessments and approvals 136
Part 6—Simplified outline of this Chapter 136
66 Simplified outline of this Chapter 136
Part 7—Deciding whether approval of actions is needed 138
Division 1—Referral of proposals to take action 138
67 What is a *controlled action*? 138
67A Prohibition on taking controlled action without approval 138
68 Referral by person proposing to take action 138
68A Actions proposed to be taken under a contract etc. 139
69 State or Territory may refer proposal to Minister 140
70 Minister may request referral of proposal 140
71 Commonwealth agency may refer proposal to Minister 142
72 Form and content of referrals 142
73 Informing person proposing to take action of referral 142
73A Informing Great Barrier Reef Marine Park Authority of proposal affecting Great Barrier Reef Marine Park 143
74 Inviting provision of information on referred proposal 143
74A Minister may request referral of a larger action 145
74AA Offence of taking action before decision made in relation to referral etc. 146
Division 1A—Decision that action is clearly unacceptable 149
74B Application of this Division 149
74C Informing person proposing to take action that action is clearly unacceptable 149
74D Procedure if Minister is requested to reconsider referral 150
Division 2—Ministerial decision whether action needs approval 153
75 Does the proposed action need approval? 153
76 Minister may request more information for making decisions 156

Authorised Version C2016C00777 registered 12/07/2016

77 Notice and reasons for decision 157
77A Action to be taken in a particular manner 158

Division 3—Reconsideration of decisions 160
78 Reconsideration of decision 160
78A Request for reconsideration of decision by person other than State or Territory Minister 163
78B Minister must inform interested persons of request and invite comments 164
78C Minister must reconsider decision and give notice of outcome 166
79 Reconsideration of decision on request by a State or Territory 167

Part 8—Assessing impacts of controlled actions 169

Division 1—Simplified outline of this Part 169
80 Simplified outline of this Part 169

Division 2—Application of this Part 170
81 Application 170
82 What are the *relevant impacts* of an action? 170
83 This Part does not apply if action covered by bilateral agreement 171
84 This Part does not apply if action covered by declaration 172

Division 3—Decision on assessment approach 175

Subdivision A—Simplified outline of this Division 175
85 Simplified outline of this Division 175

Subdivision B—Deciding on approach for assessment 175
87 Minister must decide on approach for assessment 175
88 Timing of decision on assessment approach 177
89 Minister may request more information for making decision 178
90 Directing an inquiry after starting an assessment 179
91 Notice of decision on assessment approach 180

Division 3A—Assessment on referral information 181
92 Application of this Division 181
93 Recommendation report 181

Division 4—Assessment on preliminary documentation 183
94 Application of this Division 183
95 Direction to publish referral information and invitation to comment—no further information required 183

Authorised Version C2016C00777 registered 12/07/2016

95A Direction to publish referral information and invitation to comment—further information required 184
95B Procedure after end of period for comment 185
95C Recommendation report 186

Division 5—Public environment reports 187
96 Application 187
96A Minister must give designated proponent written guidelines for preparation of draft public environment report 187
96B Standard guidelines 188
97 Tailored guidelines 188
98 Designated proponent must invite comment on draft public environment report 190
99 Finalising public environment report 191
100 Recommendation report 192

Division 6—Environmental impact statements 193
101 Application 193
101A Minister must give designated proponent written guidelines for preparation of draft environmental impact statement 193
101B Standard guidelines 194
102 Tailored guidelines 194
103 Designated proponent must invite comment on draft environmental impact statement 196
104 Finalising environmental impact statement 197
105 Recommendation report 198

Division 7—Inquiries 199

Subdivision A—Preliminary 199
106 Simplified outline 199

Subdivision B—Establishment of inquiries 199
107 Appointing commissioners and setting terms of reference 199
108 Publicising inquiry 201

Subdivision C—Conduct of inquiries 201
109 Procedure of inquiries 201
110 Inquiry to be public 202
111 Calling witnesses 202
112 Dealing with witnesses 203
113 Dealing with documents given to commission 205
114 Inspections of land, buildings and places 205
115 Entering premises by consent 206

Authorised Version C2016C00777 registered 12/07/2016

116 Entering premises under warrant 206
117 Warrants by telephone or other electronic means 207
118 Identity cards 209
119 Contempt 210
120 Protection of commissioners and witnesses 210

Subdivision D—Inquiry reports 212
121 Timing of report 212
122 Publication of report 213

Subdivision E—Commissioners' terms and conditions 213
123 Basis of appointment 213
124 Remuneration 213
125 Leave of absence 214
126 Resignation 214
127 Termination of appointment 214
128 Disclosure of interests 215
129 Other terms and conditions 216

Part 9—Approval of actions 217

Division 1—Decisions on approval and conditions 217

Subdivision A—General 217
130 Timing of decision on approval 217
131 Inviting comments from other Ministers before decision 219
131AA Inviting comments before decision from person proposing to take action and designated proponent 219
131AB Minister must obtain advice from Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development 222
131A Inviting public comment before decision 222
132 Requesting further information for approval decision 223
132A Requesting notice from appropriate State or Territory Minister about certain actions 224
132B Election to have an action management plan approved after approval of the taking of an action granted 225
133 Grant of approval 225
134 Conditions of approval 228
134A Inviting public comment before approving action management plan 233
135 Certain approvals and conditions must not give preference 233
135A Publication of recommendation reports 234

Authorised Version C2016C00777 registered 12/07/2016

Subdivision B—Considerations for approvals and conditions 235
136 General considerations 235
137 Requirements for decisions about World Heritage 237
137A Requirements for decisions about National Heritage places 237
138 Requirements for decisions about Ramsar wetlands 238
139 Requirements for decisions about threatened species and endangered communities 238
140 Requirements for decisions about migratory species 239
140A No approval for certain nuclear installations 239
Division 2—Requirement to comply with conditions 240
142 Compliance with conditions on approval 240
142A Offence of breaching conditions on approval 240
142B Strict liability offence for breach of approval condition 241
Division 3—Variation of conditions and suspension and revocation of approvals 243
143 Variation of conditions attached to approval 243
143A Variation of action management plan 245
144 Suspension of approval 246
145 Revocation of approval 248
145A Reinstating suspended or revoked approval 249
Division 4—Transfer of approvals 252
145B Transfer with Minister's consent 252
Division 5—Extension of period of effect of approval 254
145C Application to Minister to extend period of effect of approval 254
145D Minister must decide whether or not to extend approval period 254
145E Minister may request further information for making decision 255
Part 10—Strategic assessments 256
Division 1—Strategic assessments generally 256
Subdivision A—Assessment of actions to be taken in accordance with policy, plan or program 256
146 Minister may agree on strategic assessment 256
Subdivision B—Approval of taking of actions in accordance with endorsed policy, plan or program 258
146A Definition 258

Authorised Version C2016C00777 registered 12/07/2016

146B Minister may approve taking of actions in accordance with endorsed policy, plan or program 258
146C Inviting comments from other Ministers before deciding whether or not to approve taking of actions in accordance with endorsed policy, plan or program 260
146D Effect of approval of taking of actions in accordance with endorsed policy, plan or program 260

Subdivision C—Considerations for approving taking of actions in accordance with endorsed policy, plan or program 262

146E Minister must comply with this Subdivision 262
146F General considerations 262
146G Approvals relating to declared World Heritage properties 262
146H Approvals relating to National Heritage places 263
146J Approvals relating to declared Ramsar wetlands 263
146K Approvals relating to listed threatened species and ecological communities 263
146L Approvals relating to listed migratory species 264
146M No approvals relating to nuclear actions 264

Division 2—Assessment of Commonwealth-managed fisheries 265

147 Simplified outline of this Division 265
148 Assessment before management plan is determined 266
149 Assessment before determination that no plan required 266
150 Assessment of all fisheries without plans must be started within 5 years 267
151 Assessment of all Torres Strait fisheries to be started within 5 years 268
152 Further assessment if impacts greater than previously assessed 268
153 Minister must make declaration if he or she endorses plan or policy 269
154 This Division does not limit Division 1 270

Part 11—Miscellaneous rules about assessments and approvals 271

Division 1—Rules about timing 271

155 This Chapter ceases to apply to lapsed proposals 271
156 General rules about time limits 272

Division 1A—Variation of proposals to take actions 273

156A Request to vary proposal to take an action 273
156B Minister must decide whether or not to accept a varied proposal 274

Authorised Version C2016C00777 registered 12/07/2016

156C Minister may request further information in relation to a varied proposal 274
156D Effect of Minister's decision to accept or not accept a varied proposal 275
156E Notice of decision 276

Division 1B—Change of person proposing to take action 277
156F Change of person proposing to take action 277

Division 2—Actions in area offshore from a State or the Northern Territory 279
157 Actions treated as though they were in a State or the Northern Territory 279

Division 3—Exemptions 280
158 Exemptions from Part 3 and this Chapter 280

Division 3A—Approval process decisions not affected by listing events that happen after section 75 decision made 281
158A Approval process decisions not affected by listing events that happen after section 75 decision made 281

Division 4—Application of Chapter to actions that are not controlled actions 284

Subdivision A—Minister's advice on authorising actions 284
159 Simplified outline of this Subdivision 284
160 Requirement to take account of Minister's advice 285
161 Seeking the Minister's advice 287
161A Minister may decide that advice is not required 288
161B Certain provisions of other Acts not to apply if Minister decides that advice is not required 289
162 Assessment of the action 289
163 Providing advice 290
164 Reporting on response to advice 291

Subdivision C—Assessment under agreement with State or Territory 291
166 This Subdivision applies if Ministers agree it should 291
167 Making an agreement 292
168 Content of an agreement 293
169 Application of a Division of Part 8 294
170 Application of Subdivision A of Division 1 of Part 10 296

Authorised Version C2016C00777 registered 12/07/2016

Division 5—Publication of information relating to assessments 297
170A Publication of information relating to assessments 297
170B Information critical to protecting matters of national environmental significance not to be disclosed 298
170BA Designated proponent may request Minister to permit commercial-in-confidence information not to be disclosed 298
Division 6—Withdrawal of referrals 301
170C Withdrawal of referral of proposal to take an action 301
Division 7—Miscellaneous 302
170CA Fees 302
Chapter 5—Conservation of biodiversity and heritage 303
Part 11A—Interpretation 303
170D References to business days are references to Canberra business days 303
Part 12—Identifying and monitoring biodiversity and making bioregional plans 304
Division 1—Identifying and monitoring biodiversity 304
171 Identifying and monitoring biodiversity 304
172 Inventories of listed threatened species etc. on Commonwealth land 305
173 Surveys of cetaceans, listed threatened species etc. in Commonwealth marine areas 306
174 Inventories and surveys to be updated 306
Division 2—Bioregional plans 307
176 Bioregional plans 307
177 Obligations under this Act unaffected by lack of bioregional plans 308
Part 13—Species and communities 309
Division 1—Listed threatened species and ecological communities 309
Subdivision A—Listing 309
178 Listing of threatened species 309
179 Categories of threatened species 310
180 Native species of marine fish 311
181 Listing of threatened ecological communities 312

Authorised Version C2016C00777 registered 12/07/2016

182 Critically endangered, endangered and vulnerable communities 313
183 Listing of key threatening processes 313
184 Minister may amend lists 313
186 Amending list of threatened native species 314
187 Amending list of ecological communities 316
188 Amending list of key threatening processes 317
189 Minister must consider advice from Scientific Committee 318
189A Certain information may be kept confidential 319
189B Disclosure of Scientific Committee's assessments and advice 320
190 Scientific Committee may provide advice about species or communities becoming threatened 322
192 Rediscovery of threatened species that were extinct 322
193 Species posing a serious threat to human health 322
194 Lists must be publicly available 323

Subdivision AA—The nomination and listing process 323

194A Simplified outline 323
194B Definitions 324
194C Meaning of *assessment period* 325
194D Minister may determine conservation themes for an assessment period 325
194E Minister to invite nominations for each assessment period 326
194F Minister to give nominations to Scientific Committee 327
194G Scientific Committee to prepare proposed priority assessment list 328
194H Matters to be included in proposed priority assessment list 330
194J Statement to be given to Minister with proposed priority assessment list 330
194K The finalised priority assessment list 331
194L Publication of finalised priority assessment list 332
194M Scientific Committee to invite comments on items in finalised priority assessment list 332
194N Scientific Committee to assess items on finalised priority assessment list and give assessments to Minister 333
194P Time by which assessments to be provided to Minister 334
194Q Decision about inclusion of an item in the Subdivision A List 335
194R Scientific Committee may obtain advice 337
194S Co-ordination with Australian Heritage Council—Committee undertaking assessment 337

Authorised Version C2016C00777 registered 12/07/2016

194T Co-ordination with Australian Heritage Council—Committee given assessment to Minister 339

Subdivision B—Permit system 339

195 Subdivision does not apply to cetaceans 339

196 Killing or injuring member of listed threatened species or community 340

196A Strict liability for killing or injuring member of listed threatened species or community 340

196B Taking etc. member of listed threatened species or community 341

196C Strict liability for taking etc. member of listed threatened species or community 342

196D Trading etc. member of listed threatened species or community taken in Commonwealth area 342

196E Strict liability for trading etc. member of listed threatened species or community taken in Commonwealth area 343

196F Aggravated offence—member of listed threatened species that is a dugong or turtle 343

197 Certain actions are not offences 344

198 Operation of sections 18 and 18A not affected 347

199 Failing to notify taking of listed threatened species or listed ecological community 347

200 Application for permits 348

201 Minister may issue permits 349

202 Conditions of permits 350

203 Contravening conditions of a permit 351

204 Authorities under permits 351

205 Transfer of permits 352

206 Suspension or cancellation of permits 352

206A Review of decisions about permits 352

207 Fees 352

Subdivision BA—Protecting critical habitat 353

207A Register of critical habitat 353

207B Offence of knowingly damaging critical habitat 354

207C Sale or lease of Commonwealth land containing critical habitat 354

Subdivision C—Miscellaneous 355

208A Minister may accredit plans, regimes or policies 355

208 Regulations 356

Authorised Version C2016C00777 registered 12/07/2016

Division 2—Migratory species 357

Subdivision A—Listing 357

209 Listed migratory species 357

Subdivision B—Permit system 358

210 Subdivision does not apply to members of listed threatened species or cetaceans 358

211 Killing or injuring member of listed migratory species 358

211A Strict liability for killing or injuring member of listed migratory species 359

211B Taking etc. member of listed migratory species 359

211C Strict liability for taking etc. member of listed migratory species 360

211D Trading etc. member of listed migratory species taken in Commonwealth area 360

211E Strict liability for trading etc. member of listed migratory species taken in Commonwealth area 361

211F Aggravated offence—member of listed migratory species that is a dugong or turtle 362

212 Certain actions are not offences 362

213 Operation of sections 20 and 20A not affected 365

214 Failing to notify taking etc. of listed migratory species 365

215 Application for permits 367

216 Minister may issue permits 367

217 Conditions of permits 368

218 Contravening conditions of a permit 368

219 Authorities under permits 369

220 Transfer of permits 369

221 Suspension or cancellation of permits 370

221A Review of decisions about permits 370

222 Fees 370

Subdivision C—Miscellaneous 370

222A Minister may accredit plans, regimes or policies 370

223 Regulations 372

Division 3—Whales and other cetaceans 373

Subdivision A—Application of Division 373

224 Application of Division 373

Subdivision B—Australian Whale Sanctuary and important cetacean habitat areas 374

Authorised Version C2016C00777 registered 12/07/2016

225 Australian Whale Sanctuary 374
226 Prescribed waters 374
227 Coastal waters 375
228 Minister may make declaration for coastal waters 375
228A Important cetacean habitat areas 376
Subdivision C—Offences 376
229 Killing or injuring a cetacean 376
229A Strict liability for killing or injuring a cetacean 377
229B Intentionally taking etc. a cetacean 377
229C Strict liability for taking etc. a cetacean 379
229D Treating cetaceans 379
230 Possession of cetaceans 380
231 Certain actions are not offences 381
232 Action to be taken on killing etc. cetaceans 383
Subdivision E—Miscellaneous offences 385
236 Offences relating to foreign whaling vessels 385
Subdivision F—Permit system 386
237 Application for permits 386
238 Minister may issue permits 386
239 Conditions of permits 388
240 Contravening conditions of a permit 388
241 Authorities under permits 388
242 Transfer of permits 389
243 Suspension or cancellation of permits 389
243A Review of decisions about permits 390
244 Fees 390
Subdivision G—Miscellaneous 390
245 Minister may accredit plans, regimes or policies 390
246 Vesting of whales in Commonwealth 391
247 Regulations 392
Division 4—Listed marine species 393
Subdivision A—Listing 393
248 Listed marine species 393
249 Minister may amend list 393
250 Adding marine species to the list 394
251 Minister must consider advice from Scientific Committee 395
252 Minister to make lists available to the public 395

Authorised Version C2016C00777 registered 12/07/2016

Subdivision B—Permit system 396
253 Subdivision does not apply to members of certain species and cetaceans 396
254 Killing or injuring member of listed marine species 396
254A Strict liability for killing or injuring member of listed marine species 396
254B Taking etc. member of listed marine species 397
254C Strict liability for taking etc. member of listed marine species 398
254D Trading etc. member of listed marine species taken in Commonwealth area 398
254E Strict liability for trading etc. member of listed marine species taken in Commonwealth area 399
254F Aggravated offence—member of listed marine species that is a dugong or turtle 399
255 Certain actions are not offences 400
256 Failing to notify taking etc. of listed marine wildlife 402
257 Application for permits 404
258 Minister may issue permits 404
259 Conditions of permits 405
260 Contravening conditions of a permit 405
261 Authorities under permits 406
262 Transfer of permits 406
263 Suspension or cancellation of permits 407
263A Review of decisions about permits 407
264 Fees 407
Subdivision C—Miscellaneous 407
265 Minister may accredit plans, regimes or policies 407
266 Regulations 409

Authorised Version C2016C00777 registered 12/07/2016

Authorised Version C2016C00777 registered 12/07/2016

An Act relating to the protection of the environment and the conservation of biodiversity, and for related purposes

Chapter 1—Preliminary

Part 1—Preliminary

1 Short title

This Act may be cited as the *Environment Protection and Biodiversity Conservation Act 1999*.

2 Commencement

(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 12 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

3 Objects of Act

(1) The objects of this Act are:

(a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and

(b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and

(c) to promote the conservation of biodiversity; and

Authorised Version C2016C00777 registered 12/07/2016

(ca) to provide for the protection and conservation of heritage; and

(d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and

(e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and

(f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and

(g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

(2) In order to achieve its objects, the Act:

(a) recognises an appropriate role for the Commonwealth in relation to the environment by focussing Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas; and

(b) strengthens intergovernmental co-operation, and minimises duplication, through bilateral agreements; and

(c) provides for the intergovernmental accreditation of environmental assessment and approval processes; and

(d) adopts an efficient and timely Commonwealth environmental assessment and approval process that will ensure activities that are likely to have significant impacts on the environment are properly assessed; and

(e) enhances Australia's capacity to ensure the conservation of its biodiversity by including provisions to:

(i) protect native species (and in particular prevent the extinction, and promote the recovery, of threatened species) and ensure the conservation of migratory species; and

(ii) establish an Australian Whale Sanctuary to ensure the conservation of whales and other cetaceans; and

Authorised Version C2016C00777 registered 12/07/2016

(iii) protect ecosystems by means that include the establishment and management of reserves, the recognition and protection of ecological communities and the promotion of off-reserve conservation measures; and

(iv) identify processes that threaten all levels of biodiversity and implement plans to address these processes; and

(f) includes provisions to enhance the protection, conservation and presentation of world heritage properties and the conservation and wise use of Ramsar wetlands of international importance; and

(fa) includes provisions to identify places for inclusion in the National Heritage List and Commonwealth Heritage List and to enhance the protection, conservation and presentation of those places; and

(g) promotes a partnership approach to environmental protection and biodiversity conservation through:

(i) bilateral agreements with States and Territories; and

(ii) conservation agreements with land-holders; and

(iii) recognising and promoting indigenous peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity; and

(iv) the involvement of the community in management planning.

3A Principles of ecologically sustainable development

The following principles are ***principles of ecologically sustainable development***:

(a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;

(b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

Authorised Version C2016C00777 registered 12/07/2016

(c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
(d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
(e) improved valuation, pricing and incentive mechanisms should be promoted.

4 Act to bind Crown

This Act binds the Crown in each of its capacities.

5 Application of Act

Extension to external Territories

(1) This Act extends to each external Territory.

Limited extraterritorial application

(2) This Act applies to acts, omissions, matters and things in the Australian jurisdiction, and does not apply to acts, omissions, matters and things outside the Australian jurisdiction except so far as the contrary intention appears.

Application limited to Australians outside exclusive economic zone

(3) A provision of this Act that has effect in relation to a place that is outside the outer limits of the exclusive economic zone and is not on or in the continental shelf applies only in relation to:
(a) Australian citizens; and
(b) persons who:
(i) are not Australian citizens; and
(ii) hold permanent visas under the *Migration Act 1958*; and
(iii) are domiciled in Australia or an external Territory; and

Authorised Version C2016C00777 registered 12/07/2016

(c) corporations incorporated in Australia or an external Territory; and
(d) the Commonwealth; and
(e) Commonwealth agencies; and
(f) Australian aircraft; and
(g) Australian vessels; and
(h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).

Application to everyone in Australia and exclusive economic zone

(4) A provision of this Act that has effect in relation to a place that is within the outer limits of the exclusive economic zone (whether the place is in the zone or in Australia or an external Territory) or that is on or in the continental shelf applies in relation to:
(a) all persons (including persons who are not Australian citizens); and
(b) all aircraft (including aircraft that are not Australian aircraft); and
(c) all vessels (including vessels that are not Australian vessels).

Note: A reference to Australia or to an external Territory generally includes a reference to the coastal sea of Australia or the Territory (as appropriate). See section 15B of the *Acts Interpretation Act 1901*.

Definitions

(5) In this Act:

Australian aircraft means:
(a) an aircraft that is owned, possessed or controlled by:
(i) the Commonwealth or a Commonwealth agency; or
(ii) a State, a self-governing Territory or an agency of a State or self-governing Territory; or
(b) an aircraft that is registered in Australia.

Australian jurisdiction means the land, waters, seabed and airspace in, under or above:

Authorised Version C2016C00777 registered 12/07/2016

(a) Australia; or
(b) an external Territory; or
(c) the exclusive economic zone; or
(d) the continental shelf.

Note: A reference to Australia or to an external Territory generally includes a reference to the coastal sea of Australia or the Territory (as appropriate). See section 15B of the *Acts Interpretation Act 1901*.

Australian vessel means:

(a) a vessel that is owned, possessed or controlled by:
  (i) the Commonwealth or a Commonwealth agency; or
  (ii) a State, a self-governing Territory or an agency of a State or self-governing Territory; or
(b) a vessel that is registered in Australia; or
(c) a vessel that is flying the Australian flag.

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

(1) This section applies if:
  (a) under the *Fisheries Management Act 1991*, a plan of management in force under that Act applies to particular fishing activities in a particular area of water; and
  (b) the area of water is not within, or is not wholly within:
    (i) the Australian jurisdiction; or
    (ii) a Commonwealth area; or
    (iii) a Commonwealth marine area; and
  (c) the area of water is not:
    (i) an area of water, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; or
    (ii) an area of water within the limits of a State or the Northern Territory.

Authorised Version C2016C00777 registered 12/07/2016

(2) If, apart from this subsection, a provision of this Act would, or would not, apply in relation to the fishing activities (or in relation to fish or other things taken in the course of the activities) because the area of water mentioned in subsection (1) is not within, or is not wholly within:

(a) the Australian jurisdiction; or

(b) a Commonwealth area; or

(c) a Commonwealth marine area;

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

(d) the Australian jurisdiction; or

(e) a Commonwealth area; or

(f) a Commonwealth marine area;

as the case requires.

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

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

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

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

(3) In this section:

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

Authorised Version C2016C00777 registered 12/07/2016

7 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

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

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

8 Native title rights not affected

(1) To avoid doubt, nothing in this Act affects the operation of section 211 of the *Native Title Act 1993* in relation to a provision of this Act.

Note: Section 211 of the *Native Title Act 1993* provides that holders of native title rights covering certain activities do not need authorisation required by other laws to engage in those activities.

(2) This Act does not affect the operation of:

(a) the *Aboriginal Land Rights (Northern Territory) Act 1976*; or

(b) the *Native Title Act 1993*.

9 Relationship with other Acts

Aboriginal Land Rights (Northern Territory) Act 1976

(1A) Subsection 70(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* does not prevent a person exercising powers or performing functions or duties under Division 4 or 5 of Part 15, or Division 5 of Part 19, of this Act from entering or remaining on land:

(a) in the Kakadu region or Uluru region; and

(b) in which an Aboriginal Land Trust established under that Act holds an estate in fee simple.

Authorised Version C2016C00777 registered 12/07/2016

Airports Act 1996 not affected

(1) This Act does not affect the operation of the *Airports Act 1996*.

Antarctic Treaty (Environment Protection) Act 1980 not affected

(2) To avoid doubt, nothing in this Act affects the operation of subsection 7(1) of the *Antarctic Treaty (Environment Protection) Act 1980* or regulations made for the purposes of that subsection.

10 Relationship with State law

This Act is not intended to exclude or limit the concurrent operation of any law of a State or Territory, except so far as the contrary intention appears.

Authorised Version C2016C00777 registered 12/07/2016

Section 11

Chapter 2—Protecting the environment

Part 2—Simplified outline of this Chapter

11 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

This Chapter provides a basis for the Minister to decide whether an action that has, will have or is likely to have a significant impact on certain aspects of the environment should proceed.

It does so by prohibiting a person from taking an action without the Minister having given approval or decided that approval is not needed. (Part 9 deals with the giving of approval.)

Approval is not needed to take an action if any of the following declare that the action does not need approval:

(a) a bilateral agreement between the Commonwealth and the State or Territory in which the action is taken;

(b) a declaration by the Minister.

Also, an action does not need approval if it is taken in accordance with Regional Forest Agreements or it is for a purpose for which, under a zoning plan for a zone made under the *Great Barrier Reef Marine Park Act 1975*, the zone may be used or entered without permission.

Authorised Version C2016C00777 registered 12/07/2016

Part 3—Requirements for environmental approvals

Division 1—Requirements relating to matters of national environmental significance

Subdivision A—World Heritage

12 Requirement for approval of activities with a significant impact on a declared World Heritage property

(1) A person must not take an action that:

(a) has or will have a significant impact on the world heritage values of a declared World Heritage property; or

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

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Authorised Version C2016C00777 registered 12/07/2016

(3) A property has ***world heritage values*** only if it contains natural heritage or cultural heritage. The ***world heritage values*** of the property are the natural heritage and cultural heritage contained in the property.

(4) In this section:

cultural heritage has the meaning given by the World Heritage Convention.

natural heritage has the meaning given by the World Heritage Convention.

13 What is a *declared World Heritage property*?

Properties on World Heritage List

(1) A property included in the World Heritage List is a ***declared World Heritage property*** as long as the property is included in the List.

Properties not yet on World Heritage List

(2) A property specified in a declaration made under section 14 (with any amendments made under section 15) is a ***declared World Heritage property*** for the period for which the declaration is in force.

14 Declaring a property to be a declared World Heritage property

Making declarations

(1) The Minister may declare a specified property to be a declared World Heritage property by notice in the *Gazette* if:

(a) the property is a property submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention as suitable for inclusion in the World Heritage List; or

(b) the Minister is satisfied that:

Authorised Version C2016C00777 registered 12/07/2016

(i) the property has, or is likely to have, world heritage values; and

(ii) some or all of the world heritage values of the property are under threat.

Note 1: The Minister may make more than one declaration relating to the same property. See subsection 33(1) of the *Acts Interpretation Act 1901*.

Note 2: The Minister may make an extra declaration to cover property that is an extension of a property previously submitted to the World Heritage Committee.

Consulting State or Territory before making declaration

(2) Before the Minister makes a declaration relating to property wholly or partly within a State or self-governing Territory, the Minister must inform the appropriate Minister of the State or Territory of the proposal to make the declaration, and give him or her a reasonable opportunity to comment on the proposal.

Consultation not required if threat is imminent

(3) However, the Minister need not comply with subsection (2) if:

(a) he or she proposes to make a declaration in the circumstances described in paragraph (1)(b); and

(b) he or she is satisfied that the threat mentioned in subparagraph (1)(b)(ii) is imminent.

Failure to comply with subsection (2)

(4) The validity of a declaration is not affected by a failure to comply with subsection (2) in relation to the making of the declaration.

When a declaration is in force

(5) A declaration:

(a) comes into force when it is published in the *Gazette*; and

(b) remains in force (whether amended under section 15 or not) until the earliest of the following events:

Authorised Version C2016C00777 registered 12/07/2016

(i) the end of the period specified in the declaration as the period for which the declaration is in force;
(ii) the revocation of the declaration;
(iii) if the declaration specifies a property submitted to the World Heritage Committee for inclusion in the World Heritage List—the Committee either includes the property in the List or decides the property should not be included in the List.

Specified period for which declaration is in force

(6) The Minister must specify in a declaration the period for which it is to be in force. The period must not be longer than the period the Minister believes:
(a) the World Heritage Committee needs to decide whether or not to include the property in the World Heritage List, in the case of a declaration specifying a property that has been submitted to the Committee for inclusion in the List; or
(b) the Commonwealth needs to decide whether the property has world heritage values and to submit the property to the World Heritage Committee for inclusion in the World Heritage List, in the case of a declaration specifying a property not yet submitted to the Committee for inclusion in the List.

Declarations because of threat in force for a year or less

(7) The Minister must not specify that a declaration of a property is to be in force for more than 12 months if:
(a) the declaration is made in the circumstances described in paragraph (1)(b); and
(b) the property is not a property submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention as suitable for inclusion in the World Heritage List.

Authorised Version C2016C00777 registered 12/07/2016

15 Amending or revoking a declaration of a declared World Heritage property

Revoking declarations specifying nominated property

(1) The Minister must, by notice in the *Gazette*, revoke a declaration made under section 14 specifying a property that has been submitted to the World Heritage Committee for inclusion in the World Heritage List if the Commonwealth decides to withdraw the submission of the property for inclusion in the List.

Amending declarations specifying nominated property

(2) The Minister must, by notice in the *Gazette*, amend a declaration made under section 14 specifying a property that has been submitted to the World Heritage Committee for inclusion in the World Heritage List so as to remove from the specification any part of the property that the Commonwealth decides to withdraw from the submission.

Revoking declarations specifying property not yet nominated

(3) The Minister must, by notice in the *Gazette*, revoke a declaration made under section 14 specifying a property that is not submitted to the World Heritage Committee for inclusion in the World Heritage List if:
   (a) the Minister is satisfied that the property does not have world heritage values; or
   (b) the Commonwealth decides not to submit the property to the Committee for inclusion in the List; or
   (c) the Minister is satisfied that none of the world heritage values of the property are under threat.

15A Offences relating to declared World Heritage properties

(1) A person commits an offence if:
   (a) the person takes an action; and

Authorised Version C2016C00777 registered 12/07/2016

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

(c) the property is a declared World Heritage property.

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

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

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

(2) A person commits an offence if:

(a) the person takes an action; and

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

(c) the property is a declared World Heritage property.

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

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

(4) Subsections (1) and (2) do not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

Authorised Version C2016C00777 registered 12/07/2016

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Subdivision AA—National Heritage

15B Requirement for approval of activities with a significant impact on a National Heritage place

(1) A constitutional corporation, the Commonwealth or a Commonwealth agency must not take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) A person must not, for the purposes of trade or commerce:

(a) between Australia and another country; or

(b) between 2 States; or

(c) between a State and Territory; or

(d) between 2 Territories;

take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

(a) for an individual—5,000 penalty units;

Authorised Version C2016C00777 registered 12/07/2016

(b) for a body corporate—50,000 penalty units.

(3) A person must not take an action in:

(a) a Commonwealth area; or

(b) a Territory;

that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(4) A person must not take an action that has, will have or is likely to have a significant impact on the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place.

Civil Penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Note: For ***indigenous heritage value***, see section 528.

(5) A person must not take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

Civil Penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(6) Subsection (5) only applies to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, that subsection may not apply to certain actions because of subsection (8).)

(8) Subsections (1) to (5) (inclusive) do not apply to an action if:

Authorised Version C2016C00777 registered 12/07/2016

(a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency, Commonwealth or person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the constitutional corporation, Commonwealth agency, Commonwealth or person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

15C Offences relating to National Heritage places

(1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:

(a) the corporation or agency takes an action; and

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

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

(d) the place is a National Heritage place.

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

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

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

(2) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:

Authorised Version C2016C00777 registered 12/07/2016

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

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

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

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

(3) A person commits an offence if:
(a) the person takes an action; and
(b) the action is taken for the purposes of trade or commerce:
(i) between Australia and another country; or
(ii) between 2 States; or
(iii) between a State and Territory; or
(iv) between 2 Territories; and
(c) the action results or will result in a significant impact on the heritage values of a place; and
(d) the heritage values are National Heritage values of the place; and
(e) the place is a National Heritage place.

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

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

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

(4) A person commits an offence if:
(a) the person takes an action; and
(b) the action is taken for the purposes of trade or commerce:
(i) between Australia and another country; or
(ii) between 2 States; or
(iii) between a State and Territory; or

Authorised Version C2016C00777 registered 12/07/2016

(iv) between 2 Territories; and

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

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

(e) the place is a National Heritage place.

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

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

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

(5) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken in:

(i) a Commonwealth area; or

(ii) a Territory; and

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

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

(e) the place is a National Heritage place.

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

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

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

(6) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken in:

(i) a Commonwealth area; or

(ii) a Territory; and

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

Authorised Version C2016C00777 registered 12/07/2016

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

(e) the place is a National Heritage place.

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

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

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

(7) A person commits an offence if:

(a) the person takes an action; and

(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.

Note 1: For ***indigenous heritage value***, see section 528.

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

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

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

(8) A person commits an offence if:

(a) the person takes an action; and

(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.

Note 1: For ***indigenous heritage value***, see section 528.

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

Authorised Version C2016C00777 registered 12/07/2016

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

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

(9) A person commits an offence if:

(a) the person takes an action; and

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

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

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

(c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

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

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

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

(10) A person commits an offence if:

(a) the person takes an action; and

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

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

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

(c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

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

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

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

Authorised Version C2016C00777 registered 12/07/2016

(13) An offence against any of subsections (1) to (10) (inclusive) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

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

(14) Subsections (9) and (10) only apply to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, those subsections may not apply to certain actions because of subsection (16).)

(16) Subsections (1) to (10) (inclusive) do not apply to an action if:

(a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the constitutional corporation, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Authorised Version C2016C00777 registered 12/07/2016

Subdivision B—Wetlands of international importance

16 Requirement for approval of activities with a significant impact on a declared Ramsar wetland

(1) A person must not take an action that:

(a) has or will have a significant impact on the ecological character of a declared Ramsar wetland; or

(b) is likely to have a significant impact on the ecological character of a declared Ramsar wetland.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

(3) In this Act:

ecological character has the same meaning as in the Ramsar Convention.

Authorised Version C2016C00777 registered 12/07/2016

17 What is a *declared Ramsar wetland*?

Areas designated for listing

(1) A wetland, or part of a wetland, designated by the Commonwealth under Article 2 of the Ramsar Convention for inclusion in the List of Wetlands of International Importance kept under that Article is a ***declared Ramsar wetland*** as long as the wetland or part is not:

(a) excluded by the Commonwealth from the boundaries of a wetland in the List under that Article; or

(b) deleted by the Commonwealth from the List under that Article.

Areas declared by the Minister

(2) A wetland, or part of a wetland, is also a ***declared Ramsar wetland*** for the period for which a declaration of the wetland as a declared Ramsar wetland is in force.

17A Making and revoking declarations of wetlands

Declaring threatened wetlands of international importance

(1) The Minister may declare a specified wetland to be a declared Ramsar wetland by notice in the *Gazette* if the Minister is satisfied that:

(a) the wetland is of international significance or is likely to be of international significance because of its ecology, botany, zoology, limnology or hydrology; and

(b) the ecological character of some or all of the wetland is under threat.

Note: The Minister may make more than one declaration of the same wetland under this section. See subsection 33(1) of the *Acts Interpretation Act 1901*.

Consulting State or Territory before making declaration

(2) Before the Minister makes a declaration relating to a wetland wholly or partly within a State or self-governing Territory, the

Authorised Version C2016C00777 registered 12/07/2016

Minister must inform the appropriate Minister of the State or Territory of the proposal to make the declaration, and give him or her a reasonable opportunity to comment on the proposal.

Consultation not required if threat is imminent

(3) However, the Minister need not comply with subsection (2) if he or she is satisfied that the threat mentioned in paragraph (1)(b) is imminent.

Failure to comply with subsection (2)

(4) The validity of a declaration is not affected by a failure to comply with subsection (2) in relation to the making of the declaration.

When a declaration is in force

(5) A declaration comes into force on the day it is published in the *Gazette* and remains in force for the period specified in the declaration, unless it is revoked earlier.

Specifying period for which declaration is in force

(6) The Minister must specify in a declaration the period for which it is to be in force. The period must not be longer than the shorter of the following periods:

(a) the period the Minister believes the Commonwealth needs to:

(i) decide whether the wetland is of international significance in terms of ecology, botany, zoology, limnology or hydrology; and

(ii) designate the wetland for inclusion in the List of Wetlands of International Importance kept under Article 2 of the Ramsar Convention;

(b) 12 months.

Revocation of declaration of threatened wetland

(7) The Minister must, by notice in the *Gazette*, revoke a declaration of a wetland if:

Authorised Version C2016C00777 registered 12/07/2016

(a) the Minister is satisfied that the wetland is not of international significance because of its ecology, botany, zoology, limnology or hydrology; or

(b) the Minister is satisfied that there is no longer a threat to any part of the wetland.

17B Offences relating to declared Ramsar wetlands

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on the ecological character of a wetland; and

(c) the wetland is a declared Ramsar wetland.

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

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

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

(2) A person commits an offence if:

(a) the person takes an action; and

(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.

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Authorised Version C2016C00777 registered 12/07/2016

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

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

(4) Subsections (1) and (2) do not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Subdivision C—Listed threatened species and communities

18 Actions with significant impact on listed threatened species or endangered community prohibited without approval

Species that are extinct in the wild

(1) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the extinct in the wild category; or

(b) is likely to have a significant impact on a listed threatened species included in the extinct in the wild category.

Civil penalty:

(a) for an individual—5,000 penalty units;

Authorised Version C2016C00777 registered 12/07/2016

(b) for a body corporate—50,000 penalty units.

Critically endangered species

(2) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the critically endangered category; or

(b) is likely to have a significant impact on a listed threatened species included in the critically endangered category.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Endangered species

(3) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the endangered category; or

(b) is likely to have a significant impact on a listed threatened species included in the endangered category.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Vulnerable species

(4) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the vulnerable category; or

(b) is likely to have a significant impact on a listed threatened species included in the vulnerable category.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Authorised Version C2016C00777 registered 12/07/2016

Critically endangered communities

(5) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened ecological community included in the critically endangered category; or

(b) is likely to have a significant impact on a listed threatened ecological community included in the critically endangered category.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Endangered communities

(6) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened ecological community included in the endangered category; or

(b) is likely to have a significant impact on a listed threatened ecological community included in the endangered category.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

18A Offences relating to threatened species etc.

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on:

(i) a species; or

(ii) an ecological community; and

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

Authorised Version C2016C00777 registered 12/07/2016

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

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

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

(2) A person commits an offence if:

(a) the person takes an action; and

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

(i) a species; or

(ii) an ecological community; and

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

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

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

(4) Subsections (1) and (2) do not apply to an action if:

(a) the listed threatened species subject to the significant impact (or likely to be subject to the significant impact) is:

(i) a species included in the extinct category of the list under section 178; or

(ii) a conservation dependent species; or

(b) the listed threatened ecological community subject to the significant impact (or likely to be subject to the significant

Authorised Version C2016C00777 registered 12/07/2016

impact) is an ecological community included in the vulnerable category of the list under section 181.

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

Note 2: Section 19 sets out other defences. The defendant bears an evidential burden in relation to the matters in that section too. See subsection 13.3(3) of the *Criminal Code*.

19 Certain actions relating to listed threatened species and listed threatened ecological communities not prohibited

(1) A subsection of section 18 or 18A relating to a listed threatened species does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of any subsection of that section that relates to a listed threatened species.

(2) A subsection of section 18 or 18A relating to a listed threatened ecological community does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of either subsection of that section that relates to a listed threatened ecological community.

(3) A subsection of section 18 or 18A does not apply to an action if:

(a) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or

(b) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(c) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

(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).

Authorised Version C2016C00777 registered 12/07/2016

Subdivision D—Listed migratory species

20 Requirement for approval of activities with a significant impact on a listed migratory species

(1) A person must not take an action that:

(a) has or will have a significant impact on a listed migratory species; or

(b) is likely to have a significant impact on a listed migratory species.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

20A Offences relating to listed migratory species

(1) A person commits an offence if:

(a) the person takes an action; and

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

(c) the species is a listed migratory species.

Authorised Version C2016C00777 registered 12/07/2016

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

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

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

(2) A person commits an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on a species; and

(c) the species is a listed migratory species.

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

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

(4) Subsections (1) and (2) do not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in

Authorised Version C2016C00777 registered 12/07/2016

the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

20B Certain actions relating to listed migratory species not prohibited

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

Subdivision E—Protection of the environment from nuclear actions

21 Requirement for approval of nuclear actions

(1) A constitutional corporation, the Commonwealth or Commonwealth agency must not take a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

(a) for an individual—5,000 penalty units;
(b) for a body corporate—50,000 penalty units.

(2) A person must not, for the purposes of trade or commerce:

(a) between Australia and another country; or
(b) between 2 States; or
(c) between a State and a Territory; or
(d) between 2 Territories;

take a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

Authorised Version C2016C00777 registered 12/07/2016

(a) for an individual—5,000 penalty units;
(b) for a body corporate—50,000 penalty units.

(3) A person must not take in a Territory a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:
(a) for an individual—5,000 penalty units;
(b) for a body corporate—50,000 penalty units.

(4) Subsections (1), (2) and (3) do not apply to an action if:
(a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency, Commonwealth or person is in operation under Part 9 for the purposes of this section; or
(b) Part 4 lets the constitutional corporation, Commonwealth agency, Commonwealth or person take the action without an approval under Part 9 for the purposes of this section; or
(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

22 What is a *nuclear action*?

(1) In this Act:

nuclear action means any of the following:
(a) establishing or significantly modifying a nuclear installation;
(b) transporting spent nuclear fuel or radioactive waste products arising from reprocessing;
(c) establishing or significantly modifying a facility for storing radioactive waste products arising from reprocessing;

Authorised Version C2016C00777 registered 12/07/2016

(d) mining or milling uranium ore;

(e) establishing or significantly modifying a large-scale disposal facility for radioactive waste;

(f) de-commissioning or rehabilitating any facility or area in which an activity described in paragraph (a), (b), (c), (d) or (e) has been undertaken;

(g) any other action prescribed by the regulations.

nuclear installation means any of the following:

(a) a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and sub-critical assemblies);

(b) a plant for preparing or storing fuel for use in a nuclear reactor as described in paragraph (a);

(c) a nuclear waste storage or disposal facility with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section;

(d) a facility for production of radioisotopes with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section.

Note: A nuclear waste storage or disposal facility could include a facility for storing spent nuclear fuel, depending on the regulations.

radioactive waste means radioactive material for which no further use is foreseen.

reprocessing means a process or operation to extract radioactive isotopes from spent nuclear fuel for further use.

spent nuclear fuel means nuclear fuel that has been irradiated in a nuclear reactor core and permanently removed from the core.

(2) In this Act:

large-scale disposal facility for radioactive waste means, if regulations are made for the purposes of this definition, a facility prescribed by the regulations.

Authorised Version C2016C00777 registered 12/07/2016

22A Offences relating to nuclear actions

(1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:

(a) the corporation or agency takes a nuclear action; and

(b) the nuclear action results or will result in a significant impact on the environment.

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

(2) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:

(a) the corporation or agency takes a nuclear action; and

(b) the nuclear action is likely to have a significant impact on the environment and the corporation or agency is reckless as to that fact.

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

(3) A person commits an offence if:

(a) the person takes a nuclear action; and

(b) the nuclear action is taken for the purposes of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; and

(c) the nuclear action results or will result in a significant impact on the environment.

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

(4) A person commits an offence if:

(a) the person takes a nuclear action; and

Authorised Version C2016C00777 registered 12/07/2016

(b) the nuclear action is taken for the purposes of trade or commerce:
  (i) between Australia and another country; or
  (ii) between 2 States; or
  (iii) between a State and a Territory; or
  (iv) between 2 Territories; and
(c) the nuclear action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

(5) A person commits an offence if:
(a) the person takes a nuclear action; and
(b) the nuclear action is taken in a Territory; and
(c) the nuclear action results or will result in a significant impact on the environment.

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

(6) A person commits an offence if:
(a) the person takes a nuclear action; and
(b) the nuclear action is taken in a Territory; and
(c) the nuclear action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

(7) An offence against subsection (1), (2), (3), (4), (5) or (6) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

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

Authorised Version C2016C00777 registered 12/07/2016

(8) Subsections (1), (2), (3), (4), (5) and (6) do not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Subdivision F—Marine environment

23 Requirement for approval of activities involving the marine environment

Actions in Commonwealth marine areas affecting the environment

(1) A person must not take in a Commonwealth marine area an action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Actions outside Commonwealth marine areas affecting those areas

(2) A person must not take outside a Commonwealth marine area but in the Australian jurisdiction an action that:

Authorised Version C2016C00777 registered 12/07/2016

(a) has or will have a significant impact on the environment in a Commonwealth marine area; or
(b) is likely to have a significant impact on the environment in a Commonwealth marine area.

Civil penalty:
(a) for an individual—5,000 penalty units;
(b) for a body corporate—50,000 penalty units.

Fishing in State or Territory waters managed by Commonwealth

(3) A person must not take in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory an action:
(a) that:
(i) is fishing (as defined in the *Fisheries Management Act 1991*); and
(ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
(b) that:
(i) has or will have a significant impact on the environment in those coastal waters; or
(ii) is likely to have a significant impact on the environment in those coastal waters.

Civil penalty:
(a) for an individual—5,000 penalty units;
(b) for a body corporate—50,000 penalty units.

Exceptions to prohibitions

(4) Subsection (1), (2) or (3) does not apply to an action if:
(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or

Authorised Version C2016C00777 registered 12/07/2016

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the person taking the action is the Commonwealth or a Commonwealth agency; or

(e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

Exception—fishing in Commonwealth waters managed by State

(5) Subsection (1) does not apply to an action if the action:

(a) is fishing (as defined in the *Fisheries Management Act 1991*); and

(b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and

(c) is permitted under a law of the State or Territory.

Exception—fishing outside Commonwealth marine areas

(6) Subsection (2) does not apply to an action that:

(a) is fishing (as defined in the *Fisheries Management Act 1991*); and

(b) is permitted under a law of a State or self-governing Territory.

Authorised Version C2016C00777 registered 12/07/2016

24 What is a *Commonwealth marine area*?

Each of the following is a ***Commonwealth marine area***:

(a) any waters of the sea inside the seaward boundary of the exclusive economic zone, except:
  (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
  (ii) waters within the limits of a State or the Northern Territory;

(b) the seabed under waters covered by paragraph (a);

(c) airspace over waters covered by paragraph (a);

(d) any waters over the continental shelf, except:
  (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
  (ii) waters within the limits of a State or the Northern Territory; and
  (iii) waters covered by paragraph (a);

(e) any seabed under waters covered by paragraph (d);

(f) any airspace over waters covered by paragraph (d);

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

24A Offences relating to marine areas

Actions in Commonwealth marine areas affecting the environment

(1) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken in a Commonwealth marine area; and
  (c) the action results or will result in a significant impact on the environment.

Authorised Version C2016C00777 registered 12/07/2016

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

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

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

Actions in Commonwealth marine areas likely to affect the environment

(2) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken in a Commonwealth marine area; and

(c) the action is likely to have a significant impact on the environment.

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

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

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

Actions outside Commonwealth marine areas affecting those areas

(3) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and

(c) the action results or will result in a significant impact on the environment in an area; and

(d) the area is a Commonwealth marine area.

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

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

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

Authorised Version C2016C00777 registered 12/07/2016

Actions likely to affect environment in Commonwealth marine areas

(4) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
  (c) the action is likely to have a significant impact on the environment in an area; and
  (d) the area is a Commonwealth marine area.

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

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

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

Fishing with impact in State or Territory waters managed by Commonwealth

(5) A person commits an offence if:
  (a) the person takes an action that:
    (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
    (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
  (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
  (c) the action results or will result in a significant impact on the environment in those coastal waters.

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

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

Authorised Version C2016C00777 registered 12/07/2016

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

Fishing with likely impact in State or Territory waters managed by Commonwealth

(6) A person commits an offence if:

(a) the person takes an action that:

(i) is fishing (as defined in the *Fisheries Management Act 1991*); and

(ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and

(b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and

(c) the action is likely to have a significant impact on the environment in those coastal waters.

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

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

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

Penalties

(7) An offence against subsection (1), (2), (3), (4), (5) or (6) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

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

Authorised Version C2016C00777 registered 12/07/2016

Defences—general

(8) Subsection (1), (2), (3), (4), (5) or (6) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Defence—fishing in Commonwealth waters managed by State

(9) Subsections (1) and (2) do not apply to an action if the action:

(a) is fishing (as defined in the *Fisheries Management Act 1991*); and

(b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and

(c) is permitted under a law of the State or Territory.

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

Defence—fishing outside Commonwealth marine areas

(10) Subsections (3) and (4) do not apply to an action that:

Authorised Version C2016C00777 registered 12/07/2016

(a) is fishing (as defined in the *Fisheries Management Act 1991*); and

(b) is permitted under a law of a State or self-governing Territory.

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

Subdivision FA—Great Barrier Reef Marine Park

24B Requirement for approval of activities in the Great Barrier Reef Marine Park

Actions in Great Barrier Reef Marine Park affecting the environment

(1) A person must not take in the Great Barrier Reef Marine Park an action that has, will have or is likely to have, a significant impact on the environment.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Actions outside Great Barrier Reef Marine Park affecting the environment in the Marine Park

(2) A person must not take outside the Great Barrier Reef Marine Park but in the Australian jurisdiction an action that:

(a) has or will have a significant impact on the environment in the Great Barrier Reef Marine Park; or

(b) is likely to have a significant impact on the environment in the Great Barrier Reef Marine Park.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

Authorised Version C2016C00777 registered 12/07/2016

Exceptions to prohibition

(3) Subsection (1) or (2) does not apply to an action if:
  (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
  (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
  (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
  (d) the person taking the action is the Commonwealth or a Commonwealth agency; or
  (e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

24C Offences relating to Great Barrier Reef Marine Park

Actions in Great Barrier Reef Marine Park affecting the environment

(1) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken in the Great Barrier Reef Marine Park; and
  (c) the action results or will result in a significant impact on the environment.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

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

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

Authorised Version C2016C00777 registered 12/07/2016

Actions in Great Barrier Reef Marine Park likely to affect the environment

(3) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken in the Great Barrier Reef Marine Park; and
  (c) the action is likely to have a significant impact on the environment.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

(4) Strict liability applies to paragraph (3)(b).

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

Actions outside Great Barrier Reef Marine Park affecting environment in the Marine Park

(5) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken outside the Great Barrier Reef Marine Park but in the Australian jurisdiction; and
  (c) the action results in or will result in a significant impact on the environment in an area; and
  (d) the area is the Great Barrier Reef Marine Park.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

(6) Strict liability applies to paragraphs (5)(b) and (d).

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

Actions outside Great Barrier Reef Marine Park likely to affect environment in the Marine Park

(7) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken outside the Great Barrier Reef Marine Park but in the Australian jurisdiction; and

Authorised Version C2016C00777 registered 12/07/2016

(c) the action is likely to have a significant impact on the environment in an area; and
(d) the area is the Great Barrier Reef Marine Park.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

(8) Strict liability applies to paragraphs (7)(b) and (d).

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

Defences

(9) Subsection (1), (3), (5) or (7) does not apply to an action if:
(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
(c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
(d) the person taking the action is the Commonwealth or a Commonwealth agency; or
(e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Authorised Version C2016C00777 registered 12/07/2016

Subdivision FB—Protection of water resources from coal seam gas development and large coal mining development

24D Requirement for approval of developments with a significant impact on water resources

(1) A constitutional corporation, the Commonwealth or a Commonwealth agency must not take an action if:

(a) the action involves:

(i) coal seam gas development; or

(ii) large coal mining development; and

(b) the action:

(i) has or will have a significant impact on a water resource; or

(ii) is likely to have a significant impact on a water resource.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) A person must not take an action if:

(a) the action involves:

(i) coal seam gas development; or

(ii) large coal mining development; and

(b) the action is taken for the purposes of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and Territory; or

(iv) between 2 Territories; and

(c) the action:

(i) has or will have a significant impact on a water resource; or

(ii) is likely to have a significant impact on a water resource.

Authorised Version C2016C00777 registered 12/07/2016

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(3) A person must not take an action if:

(a) the action involves:

(i) coal seam gas development; or

(ii) large coal mining development; and

(b) the action is taken in:

(i) a Commonwealth area; or

(ii) a Territory; and

(c) the action:

(i) has or will have a significant impact on a water resource; or

(ii) is likely to have a significant impact on a water resource.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(4) Subsections (1) to (3) do not apply to an action if:

(a) an approval of the taking of the action by the constitutional corporation, Commonwealth, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the constitutional corporation, Commonwealth, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

Authorised Version C2016C00777 registered 12/07/2016

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

(5) A person who wishes to rely on subsection (4) in proceedings for a contravention of a civil penalty provision bears an evidential burden in relation to the matters in that subsection.

24E Offences relating to water resources

(1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:

(a) the corporation or agency takes an action involving:

(i) coal seam gas development; or

(ii) large coal mining development; and

(b) the action:

(i) results or will result in a significant impact on a water resource; or

(ii) is likely to have a significant impact on a water resource.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note 1: An executive officer of a body corporate convicted of an offence against this subsection may also commit an offence against section 495.

Note 2: If a person takes an action on land that contravenes this subsection, a landholder may commit an offence against section 496C.

(2) A person commits an offence if:

(a) the person takes an action involving:

(i) coal seam gas development; or

(ii) large coal mining development; and

(b) the action is taken for the purposes of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and Territory; or

Authorised Version C2016C00777 registered 12/07/2016

(iv) between 2 Territories; and

(c) the action:

(i) has or will have a significant impact on a water resource; or

(ii) is likely to have a significant impact on a water resource.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note 1: An executive officer of a body corporate convicted of an offence against this subsection may also commit an offence against section 495.

Note 2: If a person takes an action on land that contravenes this subsection, a landholder may commit an offence against section 496C.

(3) A person commits an offence if:

(a) the person takes an action involving:

(i) coal seam gas development; or

(ii) large coal mining development; and

(b) the action is taken in:

(i) a Commonwealth area; or

(ii) a Territory; and

(c) the action:

(i) has or will have a significant impact on a water resource; or

(ii) is likely to have a significant impact on a water resource.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note 1: An executive officer of a body corporate convicted of an offence against this subsection may also commit an offence against section 495.

Note 2: If a person takes an action on land that contravenes this subsection, a landholder may commit an offence against section 496C.

(4) Subsections (1) to (3) do not apply to an action if:

Authorised Version C2016C00777 registered 12/07/2016

(a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the constitutional corporation, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

Subdivision G—Additional matters of national environmental significance

25 Requirement for approval of prescribed actions

(1) A person must not take an action that is prescribed by the regulations for the purposes of this subsection.

Civil penalty:

(a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the

Authorised Version C2016C00777 registered 12/07/2016

action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

(3) Before the Governor-General makes regulations prescribing an action for the purposes of subsection (1), the Minister (the ***Environment Minister***) must:

(a) inform the appropriate Minister of each State and self-governing Territory of the proposal to prescribe:

(i) the action; and

(ii) a thing as matter protected by this section in relation to the action; and

(b) invite the appropriate Minister of each State and self-governing Territory to give the Environment Minister comments on the proposal within a specified period of at least 28 days; and

(c) consider the comments (if any); and

(d) if comments have been given as described in paragraph (b)—take all reasonable steps to consult the appropriate Minister of each State and self-governing Territory with a view to agreeing on:

(i) the action to be prescribed; and

(ii) the thing to be prescribed as matter protected by this section in relation to the action.

Note: Section 34 provides that the matter protected by this section is a thing prescribed by the regulations in relation to the action.

(3A) To avoid doubt, regulations may be made for the purposes of this section even if no agreement is reached on the matters described in paragraph (3)(d).

Authorised Version C2016C00777 registered 12/07/2016

(4) The regulations may prescribe different things as matter protected by this section in relation to different actions prescribed for the purposes of subsection (1).

(5) This section applies only to actions:

(a) taken in a Territory or a place acquired by the Commonwealth for public purposes (within the meaning of section 52 of the Constitution); or

(b) taken in a Commonwealth marine area; or

(c) taken for the purpose of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; or

(d) taken by a constitutional corporation; or

(e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

(6) Regulations prescribing an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.

Subdivision H—Actions that are taken to be covered by this Division

25A Actions that are taken to be covered by this Division

(1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.

Authorised Version C2016C00777 registered 12/07/2016

(3) Regulations made for the purposes of subsection (1) may only specify actions:
  (a) taken in a Territory; or
  (b) taken in a Commonwealth marine area; or
  (c) taken for the purpose of trade or commerce:
    (i) between Australia and another country; or
    (ii) between 2 States; or
    (iii) between a State and a Territory; or
    (iv) between 2 Territories; or
  (d) taken by a constitutional corporation; or
  (e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

(4) Regulations specifying an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.

(5) In this section:

regulatory provision means:
  (a) a civil penalty provision set out in this Division; or
  (b) a provision of this Division that creates an offence.

Subdivision HA—Limitation on liability for actions of third parties

25AA Limitation on liability for actions of third parties

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

Authorised Version C2016C00777 registered 12/07/2016

(d) the significant impact referred to in the provision is a consequence of the secondary action.

Defence to offences

(2) For the purposes of subsection (1), the following provisions do not apply to the primary action:

(a) subsections 15A(1) and (2);
(b) subsections 15C(1) to (10);
(c) subsections 17B(1) and (2);
(d) subsections 18A(1) and (2);
(e) subsections 20A(1) and (2);
(f) subsections 22A(1) to (6);
(g) subsections 24A(1) to (6);
(h) subsections 24C(1), (3), (5) and (7);
(i) subsections 24E(1) to (3).

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

Exception to civil penalties

(3) For the purposes of subsection (1), the following provisions do not apply to the primary action:

(a) subsection 12(1);
(b) subsections 15B(1) to (5) and (7);
(c) subsection 16(1);
(d) subsections 18(1) to (6);
(e) subsection 20(1);
(f) subsections 21(1) to (3);
(g) subsections 23(1) to (3);
(ga) subsections 24B(1) and (2);
(gb) subsections 24D(1) to (3);
(h) subsection 25(1).

Authorised Version C2016C00777 registered 12/07/2016

Subdivision I—Evidentiary certificates

25B Evidentiary certificates

Contravention

(1) The Minister may issue a written certificate:
  (a) stating that a specified person has contravened, or is contravening, a specified civil penalty provision set out in this Division; and
  (b) setting out particulars of that contravention.

(2) The Minister may issue a certificate under subsection (1) relating to a particular contravention if the Minister has reason to believe that the person concerned has committed, or is committing, the contravention.

(3) To avoid doubt, a certificate under subsection (1) may be issued even if any relevant proceedings under section 475, 480A, 480K or 481 have been instituted.

Proposal

(4) The Minister may issue a written certificate stating that, if a specified person were to carry out a proposal to engage in specified conduct, that conduct would contravene a specified civil penalty provision set out in this Division.

(5) The Minister may issue a certificate under subsection (4) if the Minister has reason to believe that:
  (a) the person proposes to engage in the conduct concerned; and
  (b) the conduct would contravene the civil penalty provision concerned.

(6) To avoid doubt, a certificate under subsection (4) may be issued even if any relevant proceedings under section 475 have been instituted.

Authorised Version C2016C00777 registered 12/07/2016

25C Certificate to be given to person

As soon as practicable after issuing a certificate under subsection 25B(1) or (4), the Minister must give a copy of the certificate to the person concerned.

25D Evidentiary effect of certificate

(1) In any proceedings under section 475, 480A, 480K or 481, a certificate under subsection 25B(1) is prima facie evidence of the matters in the certificate.

(2) In any proceedings under section 475, a certificate under subsection 25B(4) is prima facie evidence of the matters in the certificate.

(3) A document purporting to be a certificate under subsection 25B(1) or (4) must, unless the contrary is established, be taken to be such a certificate and to have been properly issued.

(4) The Minister may certify that a document is a copy of a certificate under subsection 25B(1) or (4).

(5) This section applies to the certified copy as if it were the original.

25E Variation of certificate

(1) The Minister may vary a certificate under subsection 25B(1) or (4) so long as the variation is of a minor nature.

(2) If a certificate is varied, the Minister must give the person concerned a written notice setting out the terms of the variation.

25F Revocation of certificate

(1) The Minister may revoke a certificate under subsection 25B(1) or (4).

Authorised Version C2016C00777 registered 12/07/2016

(2) If a certificate is revoked, the Minister must give the person concerned a written notice stating that the certificate has been revoked.

Authorised Version C2016C00777 registered 12/07/2016

Division 2—Protection of the environment from proposals involving the Commonwealth

Subdivision A—Protection of environment from actions involving Commonwealth land

26 Requirement for approval of activities involving Commonwealth land

Actions on Commonwealth land

(1) A person must not take on Commonwealth land an action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

(a) for an individual—1,000 penalty units;
(b) for a body corporate—10,000 penalty units.

Actions outside Commonwealth land affecting that land

(2) A person must not take outside Commonwealth land an action that:

(a) has or will have a significant impact on the environment on Commonwealth land; or
(b) is likely to have a significant impact on the environment on Commonwealth land.

Civil penalty:

(a) for an individual—1,000 penalty units;
(b) for a body corporate—10,000 penalty units.

Exceptions to prohibitions

(3) Subsection (1) or (2) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or

Authorised Version C2016C00777 registered 12/07/2016

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or

(d) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process); or

(f) the person taking the action is the Commonwealth or a Commonwealth agency.

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of ***environment*** in section 528.

Note 2: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

27 What is *Commonwealth land*?

Commonwealth land is so much of a Commonwealth area as is not a Commonwealth marine area.

27A Offences relating to Commonwealth land

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken on Commonwealth land; and

(c) the action results or will result in a significant impact on the environment.

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

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

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

Authorised Version C2016C00777 registered 12/07/2016

(2) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken on Commonwealth land; and
  (c) the action is likely to have a significant impact on the environment.

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

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

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

(3) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken outside Commonwealth land but in the Australian jurisdiction; and
  (c) the action results or will result in a significant impact on the environment in an area; and
  (d) the area is Commonwealth land.

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

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

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

(4) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action is taken outside Commonwealth land but in the Australian jurisdiction; and
  (c) the action is likely to have a significant impact on the environment in an area; and
  (d) the area is Commonwealth land.

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

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

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

Authorised Version C2016C00777 registered 12/07/2016

(5) An offence against subsection (1), (2), (3) or (4) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

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

(6) Subsection (1), (2), (3) or (4) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process); or

(e) the person taking the action is a Commonwealth agency.

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

Note 2: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of ***environment*** in section 528.

Note 3: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

Authorised Version C2016C00777 registered 12/07/2016

Subdivision AA—Protection of Commonwealth Heritage places outside the Australian jurisdiction

27B Requirement for approval of actions with significant impact on Commonwealth Heritage places overseas

(1) A person must not take outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment in a Commonwealth Heritage place outside the Australian jurisdiction.

Civil Penalty:

(a) for an individual—1,000 penalty units;

(b) for a body corporate—10,000 penalty units.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Subdivision F of Division 1 and Subdivision A of this Division protect the environment in Commonwealth Heritage places inside the Australian jurisdiction because those places are in Commonwealth marine areas or on Commonwealth land.

27C Offences relating to Commonwealth Heritage places overseas

(1) A person commits an offence if:

Authorised Version C2016C00777 registered 12/07/2016

(a) the person takes an action; and
(b) the action is taken outside the Australian jurisdiction; and
(c) the action results or will result in a significant impact on the environment in a place; and
(ca) the place is a Commonwealth Heritage place; and
(d) the place is outside the Australian jurisdiction.

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

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

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

(2) A person commits an offence if:
(a) the person takes an action; and
(b) the action is taken outside the Australian jurisdiction; and
(c) the action is likely to have a significant impact on the environment in a place; and
(d) the place is a Commonwealth Heritage place; and
(e) the place is outside the Australian jurisdiction.

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

(4) Section 14.1 (standard geographical jurisdiction) of the *Criminal Code* does not apply to an offence created by this section.

Note: Section 5 affects the extra-territorial operation of this section.

Authorised Version C2016C00777 registered 12/07/2016

(5) Subsections (1) and (2) do not apply to an action if:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Subdivision B—Protection of the environment from Commonwealth actions

28 Requirement for approval of activities of Commonwealth agencies significantly affecting the environment

(1) The Commonwealth or a Commonwealth agency must not take inside or outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment inside or outside the Australian jurisdiction.

Civil penalty:

(a) for a Commonwealth agency that is an individual—1,000 penalty units;

(b) for a Commonwealth agency that is a body corporate—10,000 penalty units.

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place from an action taken by the Commonwealth or a Commonwealth agency, because the

Authorised Version C2016C00777 registered 12/07/2016

heritage values of a place are part of the environment. See the definition of ***environment*** in section 528.

Note 2: This section does not apply to decisions to authorise activities. See Subdivision A of Division 1 of Part 23.

(2) Subsection (1) does not apply to an action if:

(a) an approval of the taking of the action by the Commonwealth or Commonwealth agency is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the Commonwealth or Commonwealth agency take the action without an approval under Part 9 for the purposes of this section; or

(c) the action is one declared by the Minister in writing to be an action to which this section does not apply; or

(d) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

(3) The Minister may make a written declaration that actions are actions to which this section does not apply, but only if he or she is satisfied that it is necessary in the interests of:

(a) Australia's defence or security; or

(b) preventing, mitigating or dealing with a national emergency.

(4) The Minister may make a written declaration that all actions, or a specified class of actions, taken by a specified Commonwealth agency are actions to which this section does not apply.

(5) The Minister may make a declaration under subsection (4) relating to a Commonwealth agency's actions only if he or she is satisfied that:

Authorised Version C2016C00777 registered 12/07/2016

(a) in taking the actions to which the declaration relates, the agency must comply with the law of a State or Territory (including a law of a State that is applied to a Commonwealth place by virtue of the *Commonwealth Places (Application of Laws) Act 1970*), that has either or both of the following objects (whether express or implied):

(i) to protect the environment;

(ii) to promote the conservation and ecologically sustainable use of natural resources; and

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

Subdivision C—Actions that are taken to be covered by this Division

28AA Actions that are taken to be covered by this Division

(1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.

(3) In this section:

regulatory provision means:

(a) a civil penalty provision set out in this Division; or

(b) a provision of this Division that creates an offence.

Authorised Version C2016C00777 registered 12/07/2016

Subdivision D—Limitation on liability for actions of third parties

28AB Limitation on liability for actions of third parties

(1) A provision mentioned in subsection (2) or (3) does not apply to an action (the ***primary action***) if:

(a) a person (the ***primary person***) takes the action; and

(b) as a consequence of the primary action, another person (the ***secondary person***) takes another action (the ***secondary action***); and

(c) the secondary action is not taken at the direction or request of the primary person; and

(d) the significant impact referred to in the provision is a consequence of the secondary action.

Defence to offences

(2) For the purposes of subsection (1), the following provisions do not apply to the primary action:

(a) subsections 27A(1) to (4);

(b) subsections 27C(1) and (2).

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

Exception to civil penalties

(3) For the purposes of subsection (1), the following provisions do not apply to the primary action:

(a) subsections 26(1) and (2);

(b) subsection 27B(1);

(c) subsection 28(1).

Authorised Version C2016C00777 registered 12/07/2016

Part 4—Cases in which environmental approvals are not needed

Division 1—Actions covered by bilateral agreements

29 Actions declared by agreement not to need approval

(1) A person may take an action described in a provision of Part 3, other than section 24D or 24E, without an approval under Part 9 for the purposes of the provision if:

(a) the action is taken in a State or self-governing Territory; and

(b) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or Territory not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with a management arrangement or authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the bilateral agreement); and

(c) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and

(d) either of the following applies:

(i) in the case of a bilaterally accredited management arrangement—the management arrangement is in force under a law of the State or Territory identified in or under the bilateral agreement;

(ii) in the case of a bilaterally accredited authorisation process—the authorisation process is set out in a law of the State or Territory, and the law and the authorisation process are identified in or under the bilateral agreement; and

(e) the action is taken in accordance with the bilaterally accredited management arrangement or bilaterally accredited authorisation process.

Authorised Version C2016C00777 registered 12/07/2016

Note 1: Section 46 deals with bilateral agreements making declarations described in paragraph (1)(b).

Note 2: Division 3 of Part 5 explains how the operation of a bilateral agreement may be ended or suspended. Also, under section 49, bilateral agreements do not operate in relation to actions in Commonwealth areas or in the Great Barrier Reef Marine Park, or actions taken by the Commonwealth or a Commonwealth agency, unless they expressly provide that they do.

(2) If the action is to be taken in 2 or more States or self-governing Territories, this section does not operate unless it operates in relation to each of those States or Territories.

30 Extended operation in State and Northern Territory waters

(1) Section 29 applies to an action taken on, over or under the seabed vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* in the same way that it applies to an action taken in the State.

(2) Section 29 applies to an action taken on, over or under the seabed vested in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980* in the same way that it applies to an action taken in the Territory.

(3) Section 29 applies to an action taken in a Commonwealth marine area to which a law of a State or self-governing Territory is applied by a Commonwealth law or by an agreement or arrangement under a Commonwealth law (other than this Act) in the same way as it applies to an action in the State or Territory, if the provision of the bilateral agreement has effect in relation to the area.

Note: A provision of a bilateral agreement only has effect in relation to a Commonwealth area or the Great Barrier Reef Marine Park if the agreement expressly provides that it does. See section 49.

31 Extended operation in non-self-governing Territories

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

Authorised Version C2016C00777 registered 12/07/2016

(a) the action is taken in a Territory (the ***action Territory***) that is not a self-governing Territory; and

(b) an Act providing for the government of the action Territory provides that some or all of the law of a State or self-governing Territory is in force in the action Territory as a law of the Territory; and

(c) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or self-governing Territory not to require approval under Part 9 for the purposes of the provision of Part 3 (because the action is approved or taken in accordance with a bilaterally accredited management arrangement or a bilaterally accredited authorisation process); and

(d) the bilateral agreement specifies that the provision of the agreement making the declaration has effect in relation to actions in the action Territory; and

(e) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and

(f) either of the following applies:

(i) in the case of a bilaterally accredited management arrangement—the management arrangement is in force under a law of the State or self-governing Territory identified in or under the bilateral agreement;

(ii) in the case of a bilaterally accredited authorisation process—the authorisation process is set out in a law of the State or self-governing Territory, and the law and the authorisation process are identified in or under the bilateral agreement; and

(g) the action is taken in accordance with the bilaterally accredited management arrangement or bilaterally accredited authorisation process.

Note: Division 3 of Part 5 explains how the operation of a bilateral agreement may be ended or suspended.

Authorised Version C2016C00777 registered 12/07/2016

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

Subdivision A—Effect of declarations

32 Actions declared by Minister not to need approval

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

(a) the action is one of a class of actions declared by the Minister under section 33 not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with an accredited management arrangement or an accredited authorisation process for the purposes of the declaration); and

(b) the declaration is in operation when the action is taken; and

(c) one of the following applies:

(i) in the case of an accredited management arrangement—the management arrangement is in operation under a law of the Commonwealth identified in or under the declaration;

(ii) in the case of an accredited authorisation process—the authorisation process is set out in a law of the Commonwealth, and the law and the authorisation process are identified in or under the declaration; and

(d) the action is taken in accordance with the accredited management arrangement or accredited authorisation process.

Authorised Version C2016C00777 registered 12/07/2016

Subdivision B—Making declarations

33 Making declaration that actions do not need approval under Part 9

Declaration of actions not needing approval

(1) The Minister may declare in writing that actions in a class of actions specified in the declaration wholly or partly by reference to the fact that their taking has been approved by the Commonwealth or a specified Commonwealth agency, in accordance with a management arrangement or authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration, do not require approval under Part 9 for the purposes of a specified provision of Part 3.

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

Note 2: Section 35 provides for revocation of a declaration.

*What is an **accredited management arrangement**?*

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

(a) the management arrangement is in operation under a law of the Commonwealth identified in or under the declaration; and

(b) the management arrangement has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

*What is an **accredited authorisation process**?*

(2A) An authorisation process is an ***accredited authorisation process*** for the purposes of a declaration that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if:

Authorised Version C2016C00777 registered 12/07/2016

(a) the authorisation process is set out in a law of the Commonwealth, and the law and the authorisation process are identified in or under the declaration; and

(b) the authorisation process has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

Accrediting management arrangement or authorisation process

(3) For the purposes of subsection (2) or (2A), the Minister may accredit by written instrument a management arrangement or authorisation process for the purposes of a declaration. However, the Minister may do so only if the Minister is satisfied that:

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

(b) there has been or will be adequate assessment of the impacts that actions approved in accordance with the management arrangement or authorisation process:

(i) have or will have; or

(ii) are likely to have;

on each matter protected by a provision of Part 3 to which the declaration relates; and

(c) actions approved or taken in accordance with the management arrangement or authorisation process will not have unacceptable or unsustainable impacts on a matter protected by a provision of Part 3 to which the declaration relates.

The Minister must publish in accordance with the regulations (if any) the instrument accrediting the management arrangement or authorisation process.

Note: Subdivision C sets out more prerequisites for accrediting a management arrangement or authorisation process.

Authorised Version C2016C00777 registered 12/07/2016

Tabling of management arrangement or authorisation process before accreditation

(4) The Minister must cause to be laid before each House of the Parliament:

(a) a copy of:

(i) in the case of a management arrangement—the management arrangement; or

(ii) in the case of an authorisation process—the relevant part of the law in which the authorisation process is set out;

that the Minister is considering accrediting for the purposes of subsection (2) or (2A); and

(b) a notice that the Minister proposes to accredit the management arrangement or authorisation process for the purposes of a declaration under this section.

Limitations on accreditation during period for opposition

(5) The Minister must not accredit a management arrangement or authorisation process for the purposes of subsection (2) or (2A) under a bilateral agreement:

(a) before, or within 15 sitting days after, a copy of the management arrangement or authorisation process is laid before each House of the Parliament under this section; or

(b) if, within those 15 sitting days of a House, notice of a motion to oppose accreditation of the management arrangement or authorisation process is given in that House—subject to subsection (5A), within 15 sitting days of that House after the notice is given.

(5A) If:

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

Authorised Version C2016C00777 registered 12/07/2016

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

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

No accreditation after accreditation opposed

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

No accreditation if motion not defeated in time

(7) The Minister must not accredit the management arrangement or authorisation process if, at the end of 15 sitting days after notice of a motion to oppose accreditation of the management arrangement or authorisation process that was given in a House of the Parliament within 15 sitting days after the management arrangement or relevant part of the law was laid before the House under this section:

(a) the notice has not been withdrawn and the motion has not been called on; or

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

Extended time after dissolution or prorogation

(8) If:

(a) notice of a motion to oppose the accreditation of the management arrangement or authorisation process is given in a House of the Parliament (the ***opposing House***); and

(b) before the end of 15 sitting days of the opposing House after the notice is given:

Authorised Version C2016C00777 registered 12/07/2016

(i) the House of Representatives is dissolved or expires; or

(ii) the Parliament is prorogued; and

(c) at the time of the dissolution, expiry or prorogation (as appropriate):

(i) the notice has not been withdrawn and the motion has not been called on; or

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

the management arrangement or relevant part of the law is taken for the purposes of subsections (5), (5A), (6) and (7) to have been laid before the opposing House on the first sitting day of that House after the dissolution, expiry or prorogation (as appropriate).

34 What is *matter protected* by a provision of Part 3?

The ***matter protected*** by a provision of Part 3 specified in column 2 of an item of the following table is the thing specified in column 3 of the item.

Matter protected by provisions of Part 3

Item	Provision	Matter protected
1	section 12	the world heritage values of a declared World Heritage property
1A	section 15A	the world heritage values of a declared World Heritage property
1B	section 15B	the National Heritage values of a National Heritage place
1C	section 15C	the National Heritage values of a National Heritage place
2	section 16	the ecological character of a declared Ramsar wetland
2A	section 17B	the ecological character of a declared Ramsar wetland
3	subsection 1 8(1)	a listed threatened species in the extinct in the wild category

Authorised Version C2016C00777 registered 12/07/2016

Section 34

Matter protected by provisions of Part 3		
Item	**Provision**	**Matter protected**
4	subsection 18(2)	a listed threatened species in the critically endangered category
5	subsection 18(3)	a listed threatened species in the endangered category
6	subsection 18(4)	a listed threatened species in the vulnerable category
7	subsection 18(5)	a listed threatened ecological community in the critically endangered category
8	subsection 18(6)	a listed threatened ecological community in the endangered category
8A	subsection 18A(1) or (2)	a listed threatened species (except a species included in the extinct category of the list referred to in section 178 or a conservation dependent species) and a listed threatened ecological community (except an ecological community included in the vulnerable category of the list referred to in section 181)
9	section 20	a listed migratory species
9A	section 20A	a listed migratory species
10	section 21	the environment
10A	section 22A	the environment
11	subsection 23(1)	the environment
12	subsection 23(2)	the environment in a Commonwealth marine area
13	subsection 23(3)	the environment in the coastal waters (as defined in the *Fisheries Management Act 1991*) in which the action is taken of the State or Territory
13A	subsection 24A(1) or (2)	the environment
13B	subsection 24A(3) or (4)	the environment in a Commonwealth marine area

Authorised Version C2016C00777 registered 12/07/2016

Matter protected by provisions of Part 3		
Item	**Provision**	**Matter protected**
13C	subsection 24A(5) or (6)	the environment in the coastal waters (as defined in the *Fisheries Management Act 1991*) in which the action is taken of the State or Territory
13D	subsection 24B(1)	the environment
13E	subsection 24B(2)	the environment in the Great Barrier Reef Marine Park
13F	subsections 24C(1) and (3)	the environment
13G	subsections 24C(5) and (7)	the environment in the Great Barrier Reef Marine Park
13H	section 24D	a water resource
13J	section 24E	a water resource
14	section 25	a thing prescribed by the regulations for the purposes of this item in relation to an action to which section 25 applies
15	subsection 26(1)	the environment
16	subsection 26(2)	the environment on Commonwealth land
16A	subsection 27A(1) or (2)	the environment
16B	subsection 27A(3) or (4)	the environment on Commonwealth land
16C	section 27B	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
16D	subsections 27C(1) and (2)	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
17	section 28	the environment

Authorised Version C2016C00777 registered 12/07/2016

Subdivision C—Prerequisites for making declarations

34A Minister may only make declaration if prescribed criteria are met

The Minister may make a declaration under section 33 only if the Minister is satisfied that the declaration:

(a) accords with the objects of this Act; and

(b) meets the requirements (if any) prescribed by the regulations.

34B Declarations relating to declared World Heritage properties

(1) The Minister may make a declaration under section 33 relating to a declared World Heritage property only if:

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the World Heritage Convention; and

(b) the Minister is satisfied that the declaration will promote the management of the property in accordance with the Australian World Heritage management principles; and

(c) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a declared World Heritage property only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the World Heritage Convention; and

(b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the property in accordance with the Australian World Heritage management principles.

Authorised Version C2016C00777 registered 12/07/2016

34BA Declarations relating to National Heritage places

(1) The Minister may make a declaration under section 33 relating to a National Heritage place only if:

(a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the National Heritage management principles; and

(b) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of such a declaration only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the National Heritage management principles.

34C Declarations relating to declared Ramsar wetlands

(1) The Minister may make a declaration under section 33 relating to a declared Ramsar wetland only if:

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the Ramsar Convention; and

(b) the Minister is satisfied that the declaration will promote the management of the wetland in accordance with the Australian Ramsar management principles; and

(c) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a declared Ramsar wetland only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the Ramsar Convention; and

Authorised Version C2016C00777 registered 12/07/2016

(b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the wetland in accordance with the Australian Ramsar management principles.

34D Declarations relating to listed threatened species and ecological communities

(1) The Minister may make a declaration under section 33 relating to a listed threatened species or a listed threatened ecological community only if:

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES; and

(b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species or community to which the declaration relates; and

(c) the Minister is satisfied that the declaration is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and

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

(d) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a listed threatened species or a listed threatened ecological community only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

Authorised Version C2016C00777 registered 12/07/2016

(iii) CITES; and

(b) the Minister is satisfied that the management arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species or community to which the declaration relates; and

(c) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and

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

34E Declarations relating to migratory species

(1) The Minister may make a declaration under section 33 relating to a listed migratory species only if:

(a) the Minister is satisfied that the declaration is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:

(i) the Bonn Convention;

(ii) CAMBA;

(iii) JAMBA;

(iv) an international agreement approved under subsection 209(4); and

(b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species to which the declaration relates; and

(c) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a listed migratory species only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with the

Authorised Version C2016C00777 registered 12/07/2016

Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:

(i) the Bonn Convention;

(ii) CAMBA;

(iii) JAMBA;

(iv) an international agreement approved under subsection 209(4); and

(b) the Minister is satisfied that the management arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species to which the declaration relates.

34F Declarations relating to Commonwealth Heritage places

(1) The Minister may make a declaration under section 33 relating to a Commonwealth Heritage place only if:

(a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the Commonwealth Heritage management principles; and

(b) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of such a declaration only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the Commonwealth Heritage management principles.

Authorised Version C2016C00777 registered 12/07/2016

Subdivision D—Other rules about declarations

35 Revoking declarations

Revoking declarations

(1) The Minister may, by written instrument, revoke a declaration made under section 33.

Revocation does not affect some actions

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

this Act continues to operate in relation to the action as if the declaration had not been revoked.

36 Other rules about declarations

Minister must not give preference

(1) In making a declaration or accrediting a management arrangement or authorisation process under section 33, or revoking a declaration under section 35, relating to an action taken:
  (a) by a person for the purposes of trade between Australia and another country or between 2 States; or
  (b) by a constitutional corporation;

the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Authorised Version C2016C00777 registered 12/07/2016

Publishing declarations

(2) The Minister must publish a declaration made under section 33, an instrument accrediting a management arrangement or authorisation process under section 33, or an instrument under section 35 revoking a declaration, in accordance with the regulations.

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

(1) If:

(a) a management arrangement or an authorisation process is an accredited management arrangement or an accredited authorisation process; and

(b) the management arrangement or authorisation process is amended, or is proposed to be amended; and

(c) the Minister is satisfied that the amendments are, or will be, minor; and

(d) the Minister is satisfied that the management arrangement or authorisation process as amended meets, or will meet, the requirements of:

(i) paragraphs 33(3)(a), (b) and (c); and

(ii) section 34A; and

(iii) subsection 34B(2), 34BA(2), 34C(2), 34D(2), 34E(2) or 34F(2) (as the case requires);

the Minister may, by instrument in writing, determine that this section applies to the amendments.

(2) If the Minister makes a determination under subsection (1):

(a) the management arrangement or authorisation process as amended is, for the purposes of this Act, taken to be an accredited management arrangement or accredited authorisation process; and

(b) subsections 33(1) to (8) do not apply in relation to the amendments to the management arrangement or authorisation process, or the management arrangement or authorisation process as amended; and

Authorised Version C2016C00777 registered 12/07/2016

(c) actions taken after the determination is made in accordance with the accredited management arrangement or accredited authorisation process as amended do not require approval under Part 9 for the purposes of a specified provision of Part 3.

(3) The Minister must publish a determination under subsection (1) in accordance with the regulations (if any).

(4) A determination under subsection (1) is not a legislative instrument.

Authorised Version C2016C00777 registered 12/07/2016

Division 3—Actions covered by Ministerial declarations and bioregional plans

Subdivision A—Effect of declarations

37 Actions declared by Minister not to need approval

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

(a) the action is an action, or one of a class of actions, declared by the Minister under section 37A not to require approval under Part 9 for the purposes of the provision (because the taking of the action is in accordance with a particular bioregional plan); and

(b) the declaration is in operation when the action is taken; and

(c) the action is taken:

(i) in the bioregion to which the plan applies; and

(ii) in accordance with the plan.

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

Subdivision B—Making declarations

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

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

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

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

Authorised Version C2016C00777 registered 12/07/2016

Subdivision C—Prerequisites for making declarations

37B General considerations

(1) In deciding whether to make a declaration under section 37A, the Minister must consider the following, so far as they are not inconsistent with any other requirements of this Subdivision:

(a) matters relevant to any matter protected by a provision of Part 3 that the Minister considers is relevant to the action or class of actions to which the declaration relates;

(b) economic and social matters.

(2) In considering those matters, the Minister must take into account the principles of ecologically sustainable development.

(3) The Minister must not make a declaration under section 37A in relation to an action or class of actions and a provision of Part 3 if the Minister considers that the action, or an action in the class, if taken, would have unacceptable or unsustainable impacts on a matter protected by the provision.

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

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

(a) accords with the objects of this Act; and

(b) meets the requirements (if any) prescribed by the regulations.

37D Declarations relating to declared World Heritage properties

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

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the World Heritage Convention; and

Authorised Version C2016C00777 registered 12/07/2016

(b) the Minister is satisfied that the declaration will promote the management of the property in accordance with the Australian World Heritage management principles; and

(c) the Minister is satisfied that the declaration is not inconsistent with a plan that has been prepared for the management of the declared World Heritage property under section 316 or as described in section 321.

37E Declarations relating to National Heritage places

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

(a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the National Heritage management principles; and

(b) the Minister is satisfied that the declaration is not inconsistent with:

(i) an agreement to which the Commonwealth is a party in relation to the National Heritage place; or

(ii) a plan that has been prepared for the management of the National Heritage place under section 324S or as described in section 324X.

37F Declarations relating to declared Ramsar wetlands

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

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the Ramsar Convention; and

(b) the Minister is satisfied that the declaration will promote the management of the wetland in accordance with the Australian Ramsar management principles.

Authorised Version C2016C00777 registered 12/07/2016

37G Declarations relating to listed threatened species and ecological communities

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

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under:
  (i) the Biodiversity Convention; or
  (ii) the Apia Convention; or
  (iii) CITES; and

(b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species or community to which the declaration relates; and

(c) the Minister is satisfied that the declaration is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and

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

37H Declarations relating to listed migratory species

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

(a) the Minister is satisfied that the declaration is not inconsistent with whichever of the following conventions or agreements because of which the species is listed:
  (i) the Bonn Convention;
  (ii) CAMBA;
  (iii) JAMBA;
  (iv) an international agreement approved under subsection 209(4); and

(b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species to which the declaration relates.

Authorised Version C2016C00777 registered 12/07/2016

37J No declarations relating to nuclear actions

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

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

Subdivision D—Other rules about declarations

37K Revoking declarations

Revoking declarations

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

Revocation does not affect some actions

(2) If:
(a) a declaration made under section 37A is revoked; and
(b) before the revocation, an action was being taken that could be taken without approval under Part 9 because its taking was covered by the declaration; and
(c) the action had not been completed before the revocation;

this Act continues to operate in relation to the action as if the declaration had not been revoked.

37L Other rules about declarations

Minister must not give preference

(1) In making a declaration under section 37A, or revoking a declaration under section 37K, relating to an action taken:

Authorised Version C2016C00777 registered 12/07/2016

(a) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or

(b) by a constitutional corporation;

the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Publishing declarations

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

Authorised Version C2016C00777 registered 12/07/2016

Division 3A—Actions covered by conservation agreements

37M Actions declared by conservation agreement not to need approval

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

(a) the action is included in a class of actions declared in a conservation agreement, in accordance with section 306A, not to require approval under Part 9 for the purposes of the provision; and

(b) the conservation agreement is in operation when the action is taken; and

(c) the action is taken in accordance with the conditions (if any) specified in the declaration.

Authorised Version C2016C00777 registered 12/07/2016

Division 4—Forestry operations in certain regions

Subdivision A—Regions covered by regional forest agreements

38 Part 3 not to apply to certain RFA forestry operations

(1) Part 3 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.

(2) In this Division:

RFA or ***regional forest agreement*** has the same meaning as in the *Regional Forest Agreements Act 2002*.

RFA forestry operation has the same meaning as in the *Regional Forest Agreements Act 2002*.

Note: This section does not apply to some RFA forestry operations. See section 42.

Subdivision B—Regions subject to a process of negotiating a regional forest agreement

39 Object of this Subdivision

The purpose of this Subdivision is to ensure that an approval under Part 9 is not required for forestry operations in a region for which a process (involving the conduct of a comprehensive regional assessment, assessment under the *Environment Protection (Impact of Proposals) Act 1974* and protection of the environment through agreements between the Commonwealth and the relevant State and conditions on licences for the export of wood chips) of developing and negotiating a regional forest agreement is being, or has been, carried on.

Authorised Version C2016C00777 registered 12/07/2016

40 Forestry operations in regions not yet covered by regional forest agreements

(1) A person may undertake forestry operations in an RFA region in a State or Territory without approval under Part 9 for the purposes of a provision of Part 3 if there is not a regional forest agreement in force for any of the region.

Note 1: This section does not apply to some forestry operations. See section 42.

Note 2: The process of making a regional forest agreement is subject to assessment under the *Environment Protection (Impact of Proposals) Act 1974*, as continued by the *Environmental Reform (Consequential Provisions) Act 1999*.

(2) In this Division:

forestry operations means any of the following done for commercial purposes:

(a) the planting of trees;

(b) the managing of trees before they are harvested;

(c) the harvesting of forest products;

and includes any related land clearing, land preparation and regeneration (including burning) and transport operations. For the purposes of paragraph (c), ***forest products*** means live or dead trees, ferns or shrubs, or parts thereof.

RFA region has the meaning given by section 41.

(3) Subsection (1) does not operate in relation to an RFA region that is the subject of a declaration in force under this section.

(4) The Minister may, by legislative instrument, declare that subsection (1) does not apply to an RFA region.

(6) The Minister must not make a declaration that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:

Authorised Version C2016C00777 registered 12/07/2016

(a) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
(b) by a constitutional corporation.

41 What is an *RFA region*?

Regions that are RFA regions

(1) Each of the following is an ***RFA region***:
(a) the area delineated as the Eden RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
(b) the area delineated as the Lower North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
(c) the area delineated as the Upper North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
(d) the area delineated as the South Region on the map of the Comprehensive Regional Assessment South CRA Region dated August 1997 and published by the State Forests GIS Branch of the organisation known as State Forests of New South Wales;
(e) the area delineated as the Gippsland Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
(f) the area delineated as the North East RFA Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
(g) the area delineated as the West Region in the map of that Region dated 3 March 1999 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;

Authorised Version C2016C00777 registered 12/07/2016

(h) the area delineated as the South East Queensland RFA Region on the map of that Region dated 21 August 1998 and published by the Bureau of Resource Sciences.

Regulations may amend list of regions

(2) The regulations may amend subsection (1).

Prerequisites for prescribing RFA regions

(3) Before the Governor-General makes regulations amending subsection (1), the Minister must be satisfied that the proposed regulations, in conjunction with this Subdivision, will not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Subdivision C—Limits on application

42 This Division does not apply to some forestry operations

Subdivisions A and B of this Division, and subsection 6(4) of the *Regional Forest Agreements Act 2002*, do not apply to RFA forestry operations, or to forestry operations, that are:

(a) in a property included in the World Heritage List; or

(b) in a wetland included in the List of Wetlands of International Importance kept under the Ramsar Convention; or

(c) incidental to another action whose primary purpose does not relate to forestry.

Authorised Version C2016C00777 registered 12/07/2016

Division 5—Actions in the Great Barrier Reef Marine Park

43 Actions taken in accordance with zoning plan

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

(a) the action is taken in a zone (within the meaning of the *Great Barrier Reef Marine Park Act 1975*) of the Great Barrier Reef Marine Park; and

(b) it is for a purpose for which, under the zoning plan for the zone made under the *Great Barrier Reef Marine Park Act 1975*, the zone may be used or entered without permission.

Authorised Version C2016C00777 registered 12/07/2016

Division 6—Actions with prior authorisation

43A Actions with prior authorisation

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

(a) the action consists of a use of land, sea or seabed; and

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

(c) immediately before the commencement of this Act, no further specific environmental authorisation was necessary to allow the action to be taken lawfully; and

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

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

(a) the action that is authorised by the authorisation following the renewal or extension is the same as the action that was authorised by the authorisation before the commencement of this Act; and

(b) the renewal or extension could properly be made or given without any further consideration of the environmental impacts of the action.

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

(2) In this Act:

environmental authorisation means an authorisation under a law of the Commonwealth, a State or a self-governing Territory that has either or both of the following objects (whether express or implied):

(a) to protect the environment;

Authorised Version C2016C00777 registered 12/07/2016

(b) to promote the conservation and ecologically sustainable use of natural resources.

specific environmental authorisation means an environmental authorisation that:

(a) identifies the particular action by reference to acts and matters uniquely associated with that action; or

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

43B Actions which are lawful continuations of use of land etc.

(1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if the action is a lawful continuation of a use of land, sea or seabed that was occurring immediately before the commencement of this Act.

(2) However, subsection (1) does not apply to an action if:

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

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

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

(3) For the purposes of this section, neither of the following is a ***continuation*** of a use of land, sea or seabed:

(a) an enlargement, expansion or intensification of use;

(b) either:

(i) any change in the location of where the use of the land, sea or seabed is occurring; or

(ii) any change in the nature of the activities comprising the use;

that results in a substantial increase in the impact of the use on the land, sea or seabed.

Authorised Version C2016C00777 registered 12/07/2016

Chapter 3—Bilateral agreements

Part 5—Bilateral agreements

Division 1—Object of Part

44 Object of this Part

The object of this Part is to provide for agreements between the Commonwealth and a State or self-governing Territory that:

(a) protect the environment; and

(b) promote the conservation and ecologically sustainable use of natural resources; and

(c) ensure an efficient, timely and effective process for environmental assessment and approval of actions; and

(d) minimise duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (and vice versa).

Authorised Version C2016C00777 registered 12/07/2016

Division 2—Making bilateral agreements

Subdivision A—Power to make bilateral agreements

45 Minister may make agreement

Making bilateral agreement

(1) On behalf of the Commonwealth, the Minister may enter into a bilateral agreement.

Note 1: A bilateral agreement can detail the level of Commonwealth accreditation of State practices, procedures, processes, systems, management plans and other approaches to environmental protection.

Note 2: Subdivision B sets out some prerequisites for entering into bilateral agreements.

*What is a **bilateral agreement**?*

(2) A ***bilateral agreement*** is a written agreement between the Commonwealth and a State or a self-governing Territory that:

(a) provides for one or more of the following:

(i) protecting the environment;

(ii) promoting the conservation and ecologically sustainable use of natural resources;

(iii) ensuring an efficient, timely and effective process for environmental assessment and approval of actions;

(iv) minimising duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (or vice versa); and

(b) is expressed to be a bilateral agreement.

Publishing notice of intention to enter into agreement

(3) As soon as practicable after starting the process of developing a draft bilateral agreement with a State or self-governing Territory, the Minister must publish, in accordance with the regulations (if

Authorised Version C2016C00777 registered 12/07/2016

any), notice of his or her intention to develop a draft bilateral agreement with the State or Territory.

Publishing bilateral agreements and related material

(4) As soon as practicable after entering into a bilateral agreement, the Minister must publish in accordance with the regulations:
  (a) the agreement; and
  (b) a statement of the Minister's reasons for entering into the agreement; and
  (c) a report on the comments (if any) received on the draft of the agreement published under Subdivision B.

46 Agreement may declare actions do not need approval under Part 9

Declaration of actions not needing approval

(1) A bilateral agreement may declare that actions in a class of actions specified in the agreement wholly or partly by reference to the fact that their taking has been approved by:
  (a) the State or self-governing Territory that is party to the agreement; or
  (b) an agency of the State or Territory;

in accordance with a management arrangement or authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement do not require approval under Part 9 for the purposes of a specified provision of Part 3, other than section 24D or 24E.

*What is a **bilaterally accredited management arrangement**?*

(2) A management arrangement is a ***bilaterally accredited management arrangement*** for the purposes of a bilateral agreement declaring that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3, other than section 24D or 24E, if and only if:

Authorised Version C2016C00777 registered 12/07/2016

(a) the management arrangement is in force under a law of the State or Territory that is a party to the agreement and the law is identified in or under the agreement; and

(b) the management arrangement has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

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

(2A) An authorisation process is a ***bilaterally accredited authorisation process*** for the purposes of a bilateral agreement declaring that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3, other than section 24D or 24E, if and only if:

(a) the authorisation process is set out in a law of the State or Territory that is a party to the agreement, and the law and the process are identified in or under the agreement; and

(b) the authorisation process has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

Accrediting management arrangement or authorisation process

(3) For the purposes of subsection (2) or (2A), the Minister may accredit in writing a management arrangement or an authorisation process for the purposes of a bilateral agreement with a State or self-governing Territory. However, the Minister may do so only if the Minister is satisfied that:

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

(b) there has been or will be adequate assessment of the impacts that actions approved in accordance with the management arrangement or authorisation process:

(i) have or will have; or

(ii) are likely to have;

Authorised Version C2016C00777 registered 12/07/2016

on each matter protected by a provision of Part 3 in relation to which the agreement makes a declaration under subsection (1); and

(c) actions approved in accordance with the management arrangement or authorisation process will not have unacceptable or unsustainable impacts on a matter protected by a provision of Part 3 in relation to which the agreement makes a declaration under subsection (1).

The Minister must publish in accordance with the regulations (if any) the instrument accrediting the management arrangement or authorisation process.

Note: Subdivision B sets out more prerequisites for accrediting a management arrangement or an authorisation process.

Tabling of management arrangement or authorisation process before accreditation

(4) The Minister must cause to be laid before each House of the Parliament a copy of:

(a) in the case of a management arrangement—the management arrangement; or

(b) in the case of an authorisation process—the relevant part of the law in which the authorisation process is set out;

that the Minister is considering accrediting for the purposes of subsection (2) or (2A).

Limitations on accreditation during period for disallowance

(5) The Minister must not accredit a management arrangement or authorisation process for the purposes of subsection (2) or (2A) under a bilateral agreement:

(a) before, or within 15 sitting days after, a copy of the management arrangement or authorisation process is laid before each House of the Parliament; or

(b) if, within those 15 sitting days of a House, notice of a motion to disallow the management arrangement or authorisation

Authorised Version C2016C00777 registered 12/07/2016

process is given in that House—subject to subsection (5A), within 15 sitting days of that House after the notice is given.

(5A) If:

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

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

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

Disallowance motion passed

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

Disallowance motion not defeated in time

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

(a) the notice has not been withdrawn and the motion has not been called on; or

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

Authorised Version C2016C00777 registered 12/07/2016

Extended time after dissolution or prorogation

(8) If:

(a) notice of a motion to disallow the management arrangement or authorisation process is given in a House of the Parliament (the ***disallowing House***); and

(b) before the end of 15 sitting days of the disallowing House after the notice is given:

(i) the House of Representatives is dissolved or expires; or

(ii) the Parliament is prorogued; and

(c) at the time of the dissolution, expiry or prorogation (as appropriate):

(i) the notice has not been withdrawn and the motion has not been called on; or

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

the management arrangement or relevant part of the law is taken for the purposes of subsections (5), (5A), (6) and (7) to have been laid before the disallowing House on the first sitting day of that House after the dissolution, expiry or prorogation (as appropriate).

No preference

(9) In accrediting a management arrangement or authorisation process for the purposes of a bilateral agreement making a declaration relating to an action:

(a) by a person for the purposes of trade between Australia and another country or between 2 States; or

(b) by a constitutional corporation;

the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Requirements for bilateral agreement making declaration

(10) If the declaration is for actions approved in accordance with a bilaterally accredited management arrangement, the declaration

Authorised Version C2016C00777 registered 12/07/2016

does not have effect for the purposes of this Act unless the bilateral agreement requires the State or self-governing Territory that is party to the agreement and agencies of the State or Territory:

(a) to act in accordance with the management arrangement; and

(b) not to approve the taking of actions that would be inconsistent with the management arrangement.

47 Agreement may declare classes of actions do not need assessment

Declaration of actions that do not need further assessment

(1) A bilateral agreement may declare that actions in a class of actions identified wholly or partly by reference to the fact that they have been assessed in a specified manner need not be assessed under Part 8.

Note: A declaration described in subsection (1) can accredit practices, procedures, systems of the State or self-governing Territory for environmental assessment.

Prerequisite to declaration

(2) The Minister may enter into a bilateral agreement declaring that actions assessed in a specified manner need not be assessed under Part 8 only if he or she is satisfied that assessment of an action in the specified manner will include assessment of the impacts the action:

(a) has or will have; or

(b) is likely to have;

on each matter protected by a provision of Part 3.

Assessment approaches that may be accredited

(3) The manner of assessment of actions that may be specified in a bilateral agreement between the Commonwealth and a State or Territory for the purposes of subsection (1) includes:

(a) assessment by any person under a law of the State or Territory; and

Authorised Version C2016C00777 registered 12/07/2016

(b) assessment by any person under an agreement or other instrument made under a law of the State or Territory; and

(c) assessment by any person in accordance with criteria specified in an instrument agreed by the parties to the bilateral agreement.

This does not limit subsection (1).

Report on actions that do not need further assessment

(4) If a bilateral agreement has (or could have) the effect that an action need not be assessed under Part 8 but the action must still be approved under Part 9, the agreement must provide for the Minister to receive a report including, or accompanied by, enough information about the relevant impacts of the action to let the Minister make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

48 Other provisions of bilateral agreements

(1) A bilateral agreement may include:

(a) provisions for State accreditation of Commonwealth processes and decisions; and

(b) other provisions for achieving the object of this Part; and

(c) provisions for the provision of information by one party to the agreement to the other party; and

(d) provisions for the publication of information relating to the agreement; and

(e) provisions relating to the operation of the whole agreement or particular provisions of the agreement, such as:

(i) provisions for the commencement of all or part of the agreement; or

(ii) provisions for auditing, monitoring and reporting on the operation and effectiveness of all or part of the agreement; or

(iii) provisions for review of all or part of the agreement; or

Authorised Version C2016C00777 registered 12/07/2016

(iv) provisions for rescission of all or part of the agreement; or

(v) provisions for expiry of the agreement; and

(f) provisions varying or revoking another bilateral agreement between the same parties; and

(g) a provision dealing with a matter that another section of this Act permits a bilateral agreement to deal with.

Consistency with Act and regulations

(2) A provision of a bilateral agreement has no effect for the purposes of this Act to the extent that it is inconsistent with this Act or the regulations. A provision of a bilateral agreement is not inconsistent with this Act or the regulations if it is possible to comply with both the provision on the one hand and the Act or regulations on the other hand.

Relationship with sections 46 and 47

(3) Subsection (1) does not limit sections 46 and 47.

48A Mandatory provisions

Application

(1) A bilateral agreement with a State or self-governing Territory including a declaration that is described in section 46 or 47 and covers actions described in subsection (2) or (3) does not have effect for the purposes of this Act unless the agreement also includes the undertaking required by subsection (2) or (3) (as appropriate).

Agreements including declarations about approvals

(2) A bilateral agreement including a declaration described in section 46 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have on a thing that is not a matter protected by a provision of Part 3 for

Authorised Version C2016C00777 registered 12/07/2016

which the declaration has effect will be assessed to the greatest extent practicable:

(a) actions taken in the State or Territory by a constitutional corporation;

(b) actions taken in the State or Territory by a person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories;

(c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;

(d) actions taken in the Territory (if applicable).

Agreements including declarations about assessment

(3) A bilateral agreement including a declaration described in section 47 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have (other than the relevant impacts of those actions) will be assessed to the greatest extent practicable:

(a) actions taken in the State or Territory by a constitutional corporation;

(b) actions taken in the State or Territory by a person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories;

(c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;

(d) actions taken in the Territory (if applicable).

Authorised Version C2016C00777 registered 12/07/2016

Auditing

(4) A bilateral agreement does not have effect for the purposes of this Act unless it includes a provision recognising that, under the *Auditor-General Act 1997*, the Auditor-General may audit the operations of the Commonwealth public sector (as defined in section 18 of that Act) relating to the bilateral agreement.

49 Certain limits on scope of bilateral agreements

(1) A provision of a bilateral agreement does not have any effect in relation to an action in a Commonwealth area or an action by the Commonwealth or a Commonwealth agency, unless the agreement expressly provides otherwise.

(1A) A provision of a bilateral agreement does not have any effect in relation to an action in the Great Barrier Reef Marine Park, unless the agreement expressly provides otherwise.

(2) A provision of a bilateral agreement does not have any effect in relation to an action in Booderee National Park, Kakadu National Park or Uluru-Kata Tjuta National Park.

(3) ***Booderee National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Booderee National Park was given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

Subdivision B—Prerequisites for making bilateral agreements

49A Consultation on draft agreement

The Minister may enter into a bilateral agreement only if he or she:

(a) has published in accordance with the regulations:

(i) a draft of the agreement; and

(ii) an invitation for any person to give the Minister comments on the draft within a specified period of at least 28 days after the latest day on which the draft or invitation was published; and

Authorised Version C2016C00777 registered 12/07/2016

(b) has taken into account the comments (if any) received in response to the invitation; and

(c) has considered the role and interests of indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources in the context of the proposed agreement, taking into account Australia's relevant obligations under the Biodiversity Convention.

50 Minister may only enter into agreement if prescribed criteria are met

The Minister may enter into a bilateral agreement only if the Minister is satisfied that the agreement:

(a) accords with the objects of this Act; and

(b) meets the requirements (if any) prescribed by the regulations.

51 Agreements relating to declared World Heritage properties

(1) The Minister may enter into a bilateral agreement containing a provision relating to a declared World Heritage property only if:

(a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the World Heritage Convention; and

(b) the Minister is satisfied that the agreement will promote the management of the property in accordance with the Australian World Heritage management principles; and

(c) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a bilateral agreement containing a provision relating to a declared World Heritage property only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the World Heritage Convention; and

Authorised Version C2016C00777 registered 12/07/2016

(b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the property in accordance with the Australian World Heritage management principles.

51A Agreements relating to National Heritage places

(1) The Minister may enter into a bilateral agreement containing a provision relating to a National Heritage place only if:

(a) the Minister is satisfied that the agreement will promote the management of the place in accordance with the National Heritage management principles; and

(b) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of such a bilateral agreement only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the National Heritage management principles.

52 Agreements relating to declared Ramsar wetlands

(1) The Minister may enter into a bilateral agreement containing a provision relating to a declared Ramsar wetland only if:

(a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the Ramsar Convention; and

(b) the Minister is satisfied that the agreement will promote the management of the wetland in accordance with the Australian Ramsar management principles; and

(c) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a

Authorised Version C2016C00777 registered 12/07/2016

bilateral agreement containing a provision relating to a declared Ramsar wetland only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the Ramsar Convention; and

(b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the wetland in accordance with the Australian Ramsar management principles.

53 Agreements relating to listed threatened species and ecological communities

(1) The Minister may enter into a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:

(a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES; and

(b) the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species or community to which the provision relates; and

(c) the Minister is satisfied that the provision is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and

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

(d) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:

Authorised Version C2016C00777 registered 12/07/2016

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

54 Agreements relating to migratory species

(1) The Minister may enter into a bilateral agreement containing a provision relating to a listed migratory species only if:
  (a) the Minister is satisfied that the provision is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:
    (i) the Bonn Convention;
    (ii) CAMBA;
    (iii) JAMBA;
    (iv) an international agreement approved under subsection 209(4); and
  (b) the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species to which the provision relates; and
  (c) the provision meets the requirements (if any) prescribed by the regulations.

Authorised Version C2016C00777 registered 12/07/2016

(2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a bilateral agreement containing a provision relating to a listed migratory species only if:

(a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:

(i) the Bonn Convention;

(ii) CAMBA;

(iii) JAMBA;

(iv) an international agreement approved under subsection 209(4); and

(b) the Minister is satisfied that the management arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species to which the provision relates.

55 Agreements relating to nuclear actions

The Minister must not enter into a bilateral agreement, or accredit for the purposes of a bilateral agreement a management arrangement or an authorisation process, containing a provision that:

(a) relates to a nuclear action; and

(b) has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of a nuclear action:

(i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or

(ii) by a constitutional corporation.

Authorised Version C2016C00777 registered 12/07/2016

56 Agreements relating to prescribed actions

The Minister must not enter into a bilateral agreement containing a provision that:

(a) relates to an action prescribed for the purposes of subsection 25(1); and

(b) has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:

(i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or

(ii) by a constitutional corporation.

Subdivision C—Minor amendments of bilateral agreements

56A Ministerial determination of minor amendments to bilateral agreements

(1) This section applies if:

(a) the Minister intends to develop a draft amendment to a bilateral agreement (the ***principal agreement***); and

(b) the Minister is satisfied that the amendment will not have a significant effect on the operation of the principal agreement; and

(c) the Minister makes a determination, in writing, to that effect.

(2) If the Minister makes a determination under paragraph (1)(c):

(a) the following provisions of this Part do not apply in relation to the amendment to the principal agreement:

(i) subsection 45(3);

(ii) paragraphs 45(4)(b) and (c);

(iii) section 49A; and

(b) the Minister must publish the principal agreement, as amended by the amending agreement, at the same time as

Authorised Version C2016C00777 registered 12/07/2016

publishing the amending agreement under paragraph 45(4)(a).

(3) A determination made under paragraph (1)(c) is not a legislative instrument.

Authorised Version C2016C00777 registered 12/07/2016

Division 3—Suspending and ending the effect of bilateral agreements

Subdivision A—Suspension and cancellation of effect

57 Representations about suspension or cancellation

Representations

(1) A person may refer to the Minister a matter that the person believes involves a contravention of a bilateral agreement.

Minister must decide whether agreement has been contravened

(2) The Minister must:
  (a) decide whether or not the bilateral agreement has been contravened; and
  (b) decide what action he or she should take in relation to any contravention.

Publication of decision and reasons

(3) The Minister must publish in accordance with the regulations each decision he or she makes, and the reasons for it.

Minister need not decide on vexatious referrals

(4) Despite subsection (2), the Minister need not make a decision under that subsection if he or she is satisfied that:
  (a) the referral was vexatious, frivolous, or not supported by sufficient information to make a decision; or
  (b) the matter referred is the same in substance as a matter that has been referred before; or
  (c) if the alleged contravention of the bilateral agreement were a contravention of the Act, the person referring the matter would not be entitled to apply under section 475 for an injunction in relation to the contravention.

Authorised Version C2016C00777 registered 12/07/2016

58 Consultation before cancellation or suspension

(1) The Minister (the ***Environment Minister***) must consult the appropriate Minister of a State or Territory that is party to a bilateral agreement if the Environment Minister believes that the State or Territory:

(a) has not complied with the agreement or will not comply with it; or

(b) has not given effect, or will not give effect, to the agreement in a way that:

(i) accords with the objects of this Act and the objects of this Part; and

(ii) promotes the discharge of Australia's obligations under any agreement with one or more other countries relevant to a matter covered by the agreement.

(2) Subsection (1) operates whether the Environment Minister's belief relates to a matter referred to him or her under section 57 or not.

59 Suspension or cancellation

Minister may give notice of suspension or cancellation

(1) If, after the consultation, the Environment Minister is not satisfied that the State or Territory:

(a) has complied with, and will comply with, the agreement; and

(b) has given effect, and will give effect, to the agreement in a way that:

(i) accords with the objects of this Act and the objects of this Part; and

(ii) promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement;

he or she may give the appropriate Minister of the State or Territory a written notice described in subsection (2) or (3).

Example 1: The Minister could give notice if the agreement declared that certain actions affecting the world heritage values of a declared world

Authorised Version C2016C00777 registered 12/07/2016

heritage property did not require approval under Part 9 if approved by the State, and the State approved an action that was not consistent with the protection, conservation and presentation of those values.

Example 2: The Minister could give notice if the agreement declared that certain actions affecting the ecological character of a declared Ramsar wetland did not require approval under Part 9 if approved by the State, and the State approved an action that had a significant adverse impact on that character.

Example 3: The Minister could give notice if the agreement declared that certain actions affecting a listed threatened species did not require approval under Part 9 if approved by the State, and the State approved an action that caused the species to become more threatened.

Notice of suspension

(2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is suspended, either generally or in relation to actions in a specified class, for a period:

(a) starting on a specified day at least 10 business days (in the capital city of the State or Territory) after the day on which the notice is given; and

(b) ending on a specified later day or on the occurrence of a specified event.

Notice of cancellation

(3) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is cancelled, either generally or in relation to actions in a specified class, on a specified day at least 10 business days (in the capital city of the State or Territory) after the day on which the notice is given.

Effect suspended or cancelled in accordance with notice

(4) The effect of an agreement or specified provision of an agreement is suspended or cancelled for the purposes of this Act, or of a specified provision of this Act, either generally or in relation to

Authorised Version C2016C00777 registered 12/07/2016

actions in a specified class, in accordance with the notice. This subsection has effect subject to sections 61 and 62.

Reasons for giving notice

(5) When giving a notice, the Environment Minister must give the appropriate Minister of the State or Territory a written statement of reasons for the giving of the notice.

Publishing notice and reasons

(6) As soon as practicable after the suspension or cancellation occurs, the Environment Minister must publish in accordance with the regulations:
  (a) notice of the suspension or cancellation; and
  (b) reasons for the suspension or cancellation.

60 Emergency suspension of effect of bilateral agreement

(1) This section applies if the Minister is satisfied that:
  (a) the State or Territory that is party to a bilateral agreement is not complying with it, or will not comply with it; and
  (b) as a result of the non-compliance, a significant impact is occurring or imminent on any matter protected by a provision of Part 3 that is relevant to an action in a class of actions to which the agreement relates.

(2) The Minister may suspend the effect of the agreement or specified provisions of the agreement for the purposes of this Act or specified provisions of this Act, by notice:
  (a) given to the appropriate Minister of the State or Territory; and
  (b) published in accordance with the regulations.

(3) The suspension continues for the shorter of the following periods:
  (a) 3 months;
  (b) the period that is specified in the notice (either by reference to time or by reference to the occurrence of an event).

Authorised Version C2016C00777 registered 12/07/2016

(4) Subsection (3) has effect subject to section 62.

(5) As soon as practicable after the Minister (the ***Environment Minister***) gives the appropriate Minister of the State or Territory (the ***State or Territory Minister***) notice of the suspension, the Environment Minister must consult the State or Territory Minister about the non-compliance.

(6) To avoid doubt, this section has effect despite sections 58 and 59.

61 Cancellation during suspension

(1) The Minister may give notice of the cancellation of the effect of a bilateral agreement even while its effect is suspended under section 59 or 60.

(2) The cancellation may occur even though the period of suspension has not ended.

(3) This section applies whether the cancellation or suspension has effect generally or in relation to actions in a specified class.

62 Revocation of notice of suspension or cancellation

(1) This section applies if the Minister:

(a) has given a notice under section 59 or 60 to suspend or cancel the effect of a bilateral agreement (either generally or in relation to actions in a specified class); and

(b) is later satisfied that the State or Territory that is party to the agreement will comply with the agreement and give effect to it in a way that:

(i) accords with the objects of this Act and the objects of this Part; and

(ii) promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement.

(2) The Minister must revoke the notice of suspension or cancellation by another written notice:

Authorised Version C2016C00777 registered 12/07/2016

(a) given to the appropriate Minister of the State or Territory; and

(b) published in accordance with the regulations.

However, the Environment Minister must not revoke the notice of cancellation after cancellation of the effect of the agreement occurs.

(3) Suspension or cancellation of the effect of the agreement does not occur if the notice of suspension or cancellation is revoked before the suspension or cancellation would otherwise occur.

(4) Suspension of the effect of the agreement ends when the notice of suspension is revoked.

63 Cancellation or suspension at request of other party

Minister must give notice of cancellation or suspension

(1) The Minister must give the appropriate Minister of a State or self-governing Territory that is party to a bilateral agreement a notice under subsection (2) or (3) if the appropriate Minister has requested a notice under that subsection in accordance with the agreement.

Notice of suspension

(2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is suspended, either generally or in relation to actions in a specified class, for a period:

(a) starting on a specified day after the day on which the notice is given; and

(b) ending on a specified later day or on the occurrence of a specified event.

Notice of cancellation

(3) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or

Authorised Version C2016C00777 registered 12/07/2016

specified provisions of this Act is cancelled, either generally or in relation to actions in a specified class, on a specified day after the day on which the notice is given.

Effect suspended or cancelled in accordance with notice

(4) The effect of an agreement or specified provision of an agreement is suspended or cancelled for the purposes of this Act, or of a specified provision of this Act, either generally or in relation to actions in a specified class, in accordance with the notice.

Publishing notice and reasons

(5) As soon as practicable after the suspension or cancellation occurs, the Minister must publish in accordance with the regulations:
  (a) notice of the suspension or cancellation; and
  (b) reasons for the suspension or cancellation.

64 Cancellation or suspension of bilateral agreement does not affect certain actions

Application

(1) This section explains how this Act operates in relation to an action that a person was able to take without approval under Part 9 for the purposes of a provision of Part 3 because of Division 1 of Part 4 and a provision of a bilateral agreement immediately before the cancellation or suspension of the operation of the provision of the agreement for the purposes of this Act or of any provision of this Act.

Actions approved in specified manner may be taken

(2) If the action was able to be taken without approval under Part 9 because its taking had already been approved in accordance with a management arrangement or an authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement,

Authorised Version C2016C00777 registered 12/07/2016

this Act continues to operate in relation to the action as if the suspension or cancellation had not occurred.

Subdivision B—Expiry of bilateral agreements

65 Expiry and review of bilateral agreements

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

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

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

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

(3) The Minister must publish the report on each subsection (2) review in accordance with the regulations.

65A Expiry of bilateral agreement does not affect certain actions

Application of subsection (2)

(1) Subsection (2) explains how this Act operates in relation to an action that a person was able to take without approval under Part 9 for the purposes of a provision of Part 3 because of Division 1 of Part 4 and a provision of a bilateral agreement immediately before the agreement ceases to have effect for the purposes of this Act under section 65.

Actions already approved may be taken

(2) This Act continues to operate in relation to the action as if the agreement had not ceased to have effect if the action was able to be taken without approval under Part 9 because its taking had already been approved in accordance with a management arrangement or

Authorised Version C2016C00777 registered 12/07/2016

an authorisation process that was a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement.

Authorised Version C2016C00777 registered 12/07/2016

Section 66

Chapter 4—Environmental assessments and approvals

Part 6—Simplified outline of this Chapter

66 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

This Chapter deals with assessment and approval of actions that Part 3 prohibits without approval (***controlled actions***). (It does not deal with actions that a bilateral agreement declares not to need approval.)

A person proposing to take an action, or a government body aware of the proposal, may refer the proposal to the Minister so he or she can decide:

(a) whether his or her approval is needed to take the action; and

(b) how to assess the impacts of the action to be able to make an informed decision whether or not to approve the action.

An assessment may be done using:

(a) a process laid down under a bilateral agreement; or

(b) a process specified in a declaration by the Minister; or

(c) a process accredited by the Minister; or

(ca) information included in the referral; or

Authorised Version C2016C00777 registered 12/07/2016

(d) preliminary documentation provided by the proponent; or

(e) a public environment report; or

(f) an environmental impact statement; or

(g) a public inquiry.

Once the report of the assessment is given to the Minister, he or she must decide whether or not to approve the action, and what conditions to attach to any approval.

Authorised Version C2016C00777 registered 12/07/2016

Part 7—Deciding whether approval of actions is needed

Division 1—Referral of proposals to take action

67 What is a *controlled action*?

An action that a person proposes to take is a ***controlled action*** if the taking of the action by the person without approval under Part 9 for the purposes of a provision of Part 3 would be (or would, but for section 25AA or 28AB, be) prohibited by the provision. The provision is a ***controlling provision*** for the action.

67A Prohibition on taking controlled action without approval

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

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

68 Referral by person proposing to take action

(1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

(2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

(3) In a referral under this section, the person must state whether or not the person thinks the action the person proposes to take is a controlled action.

Authorised Version C2016C00777 registered 12/07/2016

(4) If the person states that the person thinks the action is a controlled action, the person must identify in the statement each provision that the person thinks is a controlling provision.

(5) Subsections (1) and (2) do not apply in relation to a person proposing to take an action if the person has been informed by the Minister under section 73 that the proposal has been referred to the Minister.

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

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

(1) This section applies in relation to an action that is proposed to be taken under a contract or an agreement, arrangement or understanding, other than:

(a) a subcontract; or

(b) an agreement, arrangement or understanding entered into for the purposes of a contract or another agreement, arrangement or understanding.

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

(2) For the purposes of section 68 and subject to subsection (3), a reference to, or relating to, a person proposing to take the action is a reference to, or relating to, any of the following persons:

(a) a party to the contract, agreement, arrangement or understanding for whose benefit the action is proposed to be taken;

(b) a person who:

(i) requested or procured, or proposes to request or procure, the creation of the contract, agreement, arrangement or understanding; and

(ii) is to be responsible for controlling and directing the taking of the proposed action.

Authorised Version C2016C00777 registered 12/07/2016

(3) If a person (the ***first person***) referred to in paragraph (2)(a) or (b) refers a proposal to take the action to the Minister under section 68:

(a) no other person is required or permitted to refer a proposal to take the action to the Minister under section 68; and

(b) for the purposes of this Chapter, a reference to, or relating to, the person proposing to take the action is a reference to, or relating to, the first person.

(4) For the purposes of this section, a reference to a contract or subcontract or an agreement, arrangement or understanding includes a reference to a proposed contract, proposed subcontract, proposed agreement, proposed arrangement or proposed understanding.

(5) Nothing in this section is intended to affect the capacity of a person to refer a proposal to take an action to the Minister under subsection 68(1) or (2) on behalf of the person proposing to take the action.

69 State or Territory may refer proposal to Minister

(1) A State, self-governing Territory or agency of a State or self-governing Territory that is aware of a proposal by a person to take an action may refer the proposal to the Minister for a decision whether or not the action is a controlled action, if the State, Territory or agency has administrative responsibilities relating to the action.

(2) This section does not apply in relation to a proposal by a State, self-governing Territory or agency of a State or self-governing Territory to take an action.

Note: Section 68 applies instead.

70 Minister may request referral of proposal

(1) If the Minister believes a person proposes to take an action that the Minister thinks may be or is a controlled action, the Minister may request:

Authorised Version C2016C00777 registered 12/07/2016

(a) the person; or

(b) a State, self-governing Territory or agency of a State or self-governing Territory that the Minister believes has administrative responsibilities relating to the action;

to refer the proposal to the Minister within 15 business days or a longer period agreed by the Minister and the requested person, State, Territory or agency (as appropriate).

Note 1: If the proposal to take the action is not referred, the person cannot get an approval under Part 9 to take the action. If taking the action without approval contravenes Part 3, an injunction could be sought to prevent or stop the action, or the person could be ordered to pay a pecuniary penalty.

Note 2: Section 156 sets out rules about time limits.

(2) In making a request, the Minister must act in accordance with the regulations (if any).

Deemed referral of proposal

(3) If:

(a) the Minister has made a request under subsection (1); and

(b) the period for compliance with the request has ended; and

(c) the requested person has not referred the proposal to the Minister in accordance with the request;

the Minister may, within 20 business days after the end of that period, determine in writing that this Act has effect as if:

(d) if paragraph (1)(a) applies—the requested person had referred the proposal to the Minister under subsection 68(1) at the time the determination was made; or

(e) if paragraph (1)(b) applies—the requested person had referred the proposal to the Minister under subsection 69(1) at the time the determination was made.

(4) A determination under subsection (3) has effect accordingly.

(5) A copy of a determination under subsection (3) is to be given to the requested person.

Authorised Version C2016C00777 registered 12/07/2016

(6) Subsection 68(3) and section 72 do not apply to a referral covered by subsection (3) of this section.

(8) Subsection 74(3) applies to a referral covered by subsection (3) of this section as if the reference in paragraph 74(3)(a) to the referral were a reference to the determination concerned.

71 Commonwealth agency may refer proposal to Minister

(1) A Commonwealth agency that is aware of a proposal by a person to take an action may refer the proposal to the Minister for a decision whether or not the action is a controlled action, if the agency has administrative responsibilities relating to the action.

(2) This section does not apply in relation to a proposal by the Commonwealth or a Commonwealth agency to take an action.

Note: Section 68 applies instead.

72 Form and content of referrals

(1) A referral of a proposal to take an action must be made in a way prescribed by the regulations.

(2) A referral of a proposal to take an action must include the information prescribed by the regulations.

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

73 Informing person proposing to take action of referral

As soon as practicable after receiving a referral under section 69 or 71 of a proposal by a person to take an action, the Minister must:
(a) inform the person of the referral; and

Authorised Version C2016C00777 registered 12/07/2016

(b) invite the person to give the Minister relevant information about whether the action is a controlled action, within 10 business days.

73A Informing Great Barrier Reef Marine Park Authority of proposal affecting Great Barrier Reef Marine Park

If:

(a) a proposal to take an action is referred to the Minister; and

(b) the action, or a component of the action, is to be taken in the Great Barrier Reef Marine Park;

the Minister must, as soon as practicable after receiving the referral, give a copy of the referral to the Great Barrier Reef Marine Park Authority.

74 Inviting provision of information on referred proposal

Inviting other Commonwealth Ministers to provide information

(1) As soon as practicable after receiving a referral of a proposal to take an action, the Minister (the ***Environment Minister***) must:

(a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and

(b) invite each other Minister informed to give the Environment Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.

Inviting comments from the Australian Heritage Council

(1A) If the Minister thinks, in relation to an action that is the subject of a proposal referred to the Minister, that section 15B or 15C could be a controlling provision for the proposed action because of National Heritage values of a National Heritage place, the Minister may invite the Australian Heritage Council to give the Minister comments, within 10 business days (measured in Canberra), on whether the proposed action is a controlled action.

Authorised Version C2016C00777 registered 12/07/2016

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

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

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

Inviting comments from appropriate State or Territory Minister

(2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must, if he or she thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance):

(a) inform the appropriate Minister of the State or Territory; and

(b) invite that Minister to give the Environment Minister within 10 business days:

(i) comments on whether the proposed action is a controlled action; and

(ii) information relevant to deciding which approach would be appropriate to assess the relevant impacts of the action (including if the action could be assessed under a bilateral agreement).

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

Inviting public comment

(3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the internet:

Authorised Version C2016C00777 registered 12/07/2016

(a) the referral; and
(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

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

Non-disclosure of commercial-in-confidence information

(3A) The Environment Minister may refuse to cause to be published on the internet, under subsection (3), so much of the information included in a referral as the Minister is satisfied is commercial-in-confidence.

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

74A Minister may request referral of a larger action

(1) If the Minister receives a referral in relation to a proposal to take an action by a person, and the Minister is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister may decide to not accept the referral.

(2) If the Minister decides to not accept a referral under subsection (1), the Minister:

Authorised Version C2016C00777 registered 12/07/2016

(a) must give written notice of the decision to the person who referred the proposal to the Minister; and

(b) must give written notice of the decision to the person who is proposing to take the action that was the subject of the referral; and

(c) may, under section 70, request of the person proposing to take the action that was the subject of the referral, that they refer the proposal, to take the larger action, to the Minister.

(3) To avoid doubt, sections 73 and 74 do not apply to a referral that has not been accepted in accordance with subsection (1).

(4) If the Minister decides to accept a referral under subsection (1), the Minister must, at the time of making a decision under section 75:

(a) give written notice of the decision to the person who referred the proposal to the Minister;

(b) publish in accordance with the regulations (if any), a copy or summary of the decision.

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

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

(1) A person commits an offence if:

(a) the person takes an action; and

(b) either:

(i) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister by the person under section 68; or

(ii) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister under section 69 or 71 and the person has been informed of the referral under section 73; and

(c) the referral has not been withdrawn under section 170C; and

Authorised Version C2016C00777 registered 12/07/2016

(d) the Minister has not decided under subsection 74A(1) not to accept the referral; and

(e) provisions of this Chapter are not stopped by Division 1A from applying in relation to the referral; and

(f) provisions of this Chapter are not stopped by section 155 from applying because of the referral in relation to the action (or a larger action of which the action is a component); and

(g) no decision that the action (or a larger action of which the action is a component) is not a controlled action is in operation under section 75 in relation to the referral; and

(h) no decision is in operation under Part 9 in relation to the referral approving, or not approving, the taking of the action (or a larger action of which the action is a component).

Penalty: 500 penalty units.

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

(2) Subsection (1) does not apply to the taking of an action by a person if:

(a) the taking of the action is reasonably necessary in order to comply with a requirement or request made under this Part or Part 8 or 9 in relation to the action (or a larger action of which the action is a component); and

(b) before taking the action, the person gave the Minister written notice of the taking of the action; and

(c) the notice was given in accordance with any applicable requirements of the regulations.

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

Referral requested: taking action before requested referral is made

(3) A person commits an offence if:

(a) the person takes an action; and

Authorised Version C2016C00777 registered 12/07/2016

(b) the Minister, under section 70, has requested the referral by the person of a proposal to take the action (or a larger action of which the action is a component) to the Minister; and

(c) the request has not been revoked; and

(d) the referral has not been made.

Penalty: 500 penalty units.

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

Authorised Version C2016C00777 registered 12/07/2016

Division 1A—Decision that action is clearly unacceptable

74B Application of this Division

(1) This Division applies to the referral of a proposal to take an action if, within 20 business days after the Minister receives the referral:

(a) the Minister considers, on the basis of the information in the referral, that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and

(b) the Minister decides that this Division should apply to the referral.

(2) If this Division applies to a referral, any other provisions of this Chapter that would, apart from this subsection, have applied to the referral cease to apply to the referral.

(3) Subsection (2) has effect subject to paragraph 74D(6)(a).

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

(1) As soon as practicable after making the decision under paragraph 74B(1)(b) in relation to a referral, the Minister must give written notice of the decision to:

(a) the person proposing to take the action that is the subject of the referral; and

(b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action that is the subject of the referral).

(2) The notice must:

(a) state that the Minister considers that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and

(b) set out the reasons for the Minister's decision.

Authorised Version C2016C00777 registered 12/07/2016

(3) After receiving the notice under subsection (1), the person proposing to take the action may:

(a) withdraw the referral and take no further action in relation to the proposed action; or

(b) withdraw the referral and refer a new proposal to take a modified action to the Minister in accordance with Division 1; or

(c) request the Minister, in writing, to reconsider the referral.

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

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

74D Procedure if Minister is requested to reconsider referral

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

Inviting public comment

(2) The Minister must, within 10 business days after receiving the request, publish on the internet:

(a) a notice stating that the Minister proposes not to approve the taking of the action that is the subject of the referral; and

(b) the reasons for the Minister's decision; and

(c) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing on:

(i) the impacts that the action would have on a matter protected by a provision of Part 3; and

(ii) the Minister's proposal to refuse to approve the taking of the action.

Report about relevant impacts of action

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

Authorised Version C2016C00777 registered 12/07/2016

(a) prepare a written report about the relevant impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3; and

(b) give the Minister:

(i) the report; and

(ii) a copy of any comments received by the Secretary within the period for comment.

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

Decision following reconsideration

(4) Within 20 business days after receiving the report under subsection (3), the Minister must:

(a) if the Minister still considers that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3—decide to refuse to approve the taking of the action; or

(b) decide that the referral is to be dealt with under the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral.

(5) If the Minister decides to refuse to approve the taking of the action, the Minister must, within 10 business days after making the decision, give notice of the decision to:

(a) the person proposing to take the action; and

(b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action).

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

(6) If the Minister makes a decision under paragraph (4)(b):

(a) the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral start to apply to the referral; and

Authorised Version C2016C00777 registered 12/07/2016

(b) for the purposes of the application of those provisions, a day is not to be counted as a business day if it is:

(i) on or after the day the Minister received the referral; and

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

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

Authorised Version C2016C00777 registered 12/07/2016

Division 2—Ministerial decision whether action needs approval

75 Does the proposed action need approval?

Is the action a controlled action?

(1) The Minister must decide:

(a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and

(b) which provisions of Part 3 (if any) are controlling provisions for the action.

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

(1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Minister must consider public comment

(1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:

(a) in response to the invitation under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and

(b) within the period specified in the invitation.

Considerations in decision

(2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:

(a) the Minister must consider all adverse impacts (if any) the action:

(i) has or will have; or

(ii) is likely to have;

Authorised Version C2016C00777 registered 12/07/2016

on the matter protected by each provision of Part 3; and

(b) must not consider any beneficial impacts the action:

(i) has or will have; or

(ii) is likely to have;

on the matter protected by each provision of Part 3.

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

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

(a) has or will have; or

(b) is likely to have;

on the matter.

(2AA) For the purposes of subsection (2), if the provision of Part 3 is subsection 24B(1) or 24C(1) or (3), then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in the Great Barrier Reef Marine Park:

(a) has or will have; or

(b) is likely to have;

on the matter.

(2B) Without otherwise limiting any adverse impacts that the Minister must consider under paragraph (2)(a), the Minister must not consider any adverse impacts of:

(a) any RFA forestry operation to which, under Division 4 of Part 4, Part 3 does not apply; or

(b) any forestry operations in an RFA region that may, under Division 4 of Part 4, be undertaken without approval under Part 9.

Authorised Version C2016C00777 registered 12/07/2016

Designating a proponent of the action

(3) If the Minister decides that the action is a controlled action, the Minister must designate a person as proponent of the action.

Consent to designation

(4) The Minister may designate a person who does not propose to take the action only if:
  (a) the person agrees to being designated; and
  (b) the person proposing to take the action agrees to the designation.

Timing of decision and designation

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

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

Time does not run while further information being sought

(6) If the Minister has requested more information under subsection 76(1) or (2) for the purposes of making a decision, a day is not to be counted as a business day for the purposes of subsection (5) if it is:
  (a) on or after the day the Minister requested the information; and
  (b) on or before the day on which the Minister receives the last of the information requested.

Authorised Version C2016C00777 registered 12/07/2016

Running of time may be suspended by agreement

(7) The Minister and the person proposing to take the action may agree in writing that days within a period worked out in accordance with the agreement are not to be counted as business days for the purposes of subsection (5). If the agreement is made, those days are not to be counted for the purposes of that subsection.

76 Minister may request more information for making decisions

(1) If the Minister believes on reasonable grounds that the referral of a proposal to take an action does not include enough information for the Minister to decide:

(a) whether the action is a controlled action; or

(b) which provisions of Part 3 (if any) are controlling provisions for the action;

the Minister may request the person proposing to take the action to provide specified information relevant to making the decision.

(2) Before the Minister makes the decisions under subsection 75(1) in relation to the action, the Minister may request the person proposing to take the action to provide information about whether or not the action is a component of a larger action that is proposed to be taken by the person.

(3) If the Minister believes on reasonable grounds that the information given to the Minister in relation to the action is not enough to allow the Minister to make an informed decision on the approach to be used for assessment of the relevant impacts of the action, the Minister may request the person proposing to take the action to provide specified information relevant to making the decision.

(4) Without limiting subsection (3), if the action is to be taken in a State or self-governing Territory, the Minister may request the person proposing to take the action to provide information about:

(a) whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and

Authorised Version C2016C00777 registered 12/07/2016

(b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.

(5) The Minister may make a request under subsection (3) even if the Minister has not yet made the decisions under subsection 75(1) in relation to the action.

77 Notice and reasons for decision

Giving notice

(1) Within 10 business days after deciding whether an action that is the subject of a proposal referred to the Minister is a controlled action or not, the Minister must:

(a) give written notice of the decision to:

(i) the person proposing to take the action; and

(ii) if the Minister has designated as proponent of the action a person who does not propose to take the action—that person; and

(iii) if the Minister decided that the action is a controlled action because of Division 1 of Part 3 (which deals with matters of national environmental significance)—the appropriate Minister of each State or self-governing Territory in which the action is to be taken; and

(b) publish notice of the decision in accordance with the regulations.

Note 1: Section 156 sets out rules about time limits.

Note 2: Subparagraph (1)(a)(iii) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

Notice must identify any applicable controlling provisions

(2) If the decision is that the action is a controlled action, the notice must identify each of the controlling provisions.

Reasons for decision

(4) The Minister must give reasons for the decision to a person who:

Authorised Version C2016C00777 registered 12/07/2016

(a) has been given the notice; and

(b) within 28 days of being given the notice, has requested the Minister to provide reasons.

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

77A Action to be taken in a particular manner

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

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

(1A) For the purposes of subsection (1), it does not matter whether or not the Minister believes that the action will be taken in accordance with:

(a) an accredited management arrangement or an accredited authorisation process for the purposes of a declaration under section 33; or

(b) a bioregional plan to which a declaration made under section 37A relates; or

(c) a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of a bilateral agreement.

(2) A person must not take an action, that is the subject of a notice that includes a particular manner under subsection (1), in a way that is inconsistent with the manner specified in the notice.

Civil penalty:

Authorised Version C2016C00777 registered 12/07/2016

(a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;
(b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.

Authorised Version C2016C00777 registered 12/07/2016

Division 3—Reconsideration of decisions

78 Reconsideration of decision

Limited power to vary or substitute decisions

(1) The Minister may revoke a decision (the ***first decision***) made under subsection 75(1) about an action and substitute a new decision under that subsection for the first decision, but only if:

(a) the Minister is satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action:

(i) has or will have; or

(ii) is likely to have;

on a matter protected by a provision of Part 3; or

(aa) the Minister is satisfied that the revocation and substitution is warranted by a substantial change in circumstances that was not foreseen at the time of the first decision and relates to the impacts that the action:

(i) has or will have; or

(ii) is likely to have;

on a matter protected by a provision of Part 3; or

(b) the following requirements are met:

(i) the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77;

(ii) the Minister is satisfied that the action is not being, or will not be, taken in the manner identified; or

(ba) the following requirements are met:

(i) the first decision was that the action was not a controlled action because of a provision of a bilateral agreement and a management arrangement or an authorisation process that is a bilaterally accredited

Authorised Version C2016C00777 registered 12/07/2016

management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement;

(ii) the provision of the agreement no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in force under, or set out in, a law of a State or a self-governing Territory identified in or under the agreement; or

(c) the following requirements are met:

(i) the first decision was that the action was not a controlled action because of a declaration under section 33 and a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration;

(ii) the declaration no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in operation under, or set out in, a law of the Commonwealth identified in or under the declaration; or

(ca) the following requirements are met:

(i) the first decision was that the action was not a controlled action because of a declaration under section 37A and a bioregional plan to which the declaration relates;

(ii) the declaration no longer operates in relation to the action, or the bioregional plan is no longer in force; or

(d) the Minister is requested under section 79 to reconsider the decision.

Note 1: Subsection 75(1) provides for decisions about whether an action is a controlled action and what the controlling provisions for the action are.

Note 2: A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca). See section 78A.

Note 3: If the Minister decides to revoke a decision under subsection (1) and substitute a new decision for it, the Minister is not required to carry

Authorised Version C2016C00777 registered 12/07/2016

out the processes referred to in sections 73 and 74 again before making the new decision.

Reversing decision that provision of Part 3 is not controlling provision

(2) A provision of Part 3 letting an action be taken if the Minister has decided that a particular provision (the ***prohibiting provision***) of that Part is not a controlling provision for the action does not prevent the Minister from acting under subsection (1) to revoke a decision that the prohibiting provision is not a controlling provision for an action and substitute a decision that the prohibiting provision is a controlling provision for the action.

Decision not to be revoked after approval granted or refused or action taken

(3) The Minister must not revoke the first decision after:
  (a) the Minister has granted or refused an approval of the taking of the action; or
  (b) the action is taken.

General effect of change of decision

(4) When the first decision is revoked and a new decision is substituted for it:
  (a) any provisions of this Chapter that applied in relation to the action because of the first decision cease to apply in relation to the action; and
  (b) any provisions of this Chapter that are relevant because of the new decision apply in relation to the action.

Change of designation of proponent

(5) If the Minister believes a person (the ***first proponent***) designated under section 75 as proponent of an action is no longer an appropriate person to be the designated proponent of the action, the Minister may revoke the designation and designate another person (the ***later proponent***) as proponent of the action.

Authorised Version C2016C00777 registered 12/07/2016

Consent to designation

(6) The Minister may designate the other person as proponent of the action only if:
  (a) he or she consents to it and the person proposing to take the action agrees to it; or
  (b) the other person is the person proposing to take the action.

Effect of change of designated proponent

(7) If the Minister revokes the designation of the first proponent and designates the later proponent:
  (a) the provisions of this Chapter that applied to the first proponent cease to apply to the first proponent in relation to the action but apply to the later proponent; and
  (b) for the purposes of those provisions the later proponent is taken to have done anything the first proponent did in relation to the action; and
  (c) for the purposes of those provisions anything done in relation to the first proponent in relation to the action is taken to have been done in relation to the later proponent.

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

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

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

(2) A request under subsection (1) must:
  (a) be in writing; and
  (b) set out the basis on which the person thinks the decision should be reconsidered; and
  (c) if the regulations specify other requirements for requests under subsection (1)—comply with those requirements.

Authorised Version C2016C00777 registered 12/07/2016

(3) If a request is made under subsection (1) in relation to a decision that an action is a controlled action, or that particular provisions are controlling provisions for an action, then:

(a) if the request is made by the designated proponent of the action—Part 8 ceases to apply in relation to the action until the Minister makes a decision in relation to the request; but

(b) if the request is made by another person—the application of Part 8 in relation to the action is not affected by the making of the request (subject to the outcome of the reconsideration).

(4) If:

(a) because of paragraph (3)(a), Part 8 has ceased to apply in relation to an action; and

(b) the Minister confirms the decision that is the subject of the request under subsection (1);

then:

(c) the application of Part 8 in relation to the action resumes (as does any assessment process under that Part that had previously commenced in relation to the action); and

(d) for the purposes of the resumed application of Part 8, a day is not to be counted as a business day if it is:

(i) on or after the day the Minister received the request; and

(ii) on or before the day the Minister confirms the decision.

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

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

Informing designated proponent of request and inviting comments

(2) If the request is made by a person other than the designated proponent of the action, the Environment Minister must:

(a) inform the designated proponent of the request in accordance with subsection (3); and

Authorised Version C2016C00777 registered 12/07/2016

(b) invite the designated proponent to give the Environment Minister, within 10 business days, comments on the request.

(3) For the purpose of paragraph (2)(a), the Environment Minister must inform the designated proponent of the request by giving the designated proponent such information relating to the request as the Minister considers appropriate. The Minister need not (for example) reveal the identity of the person who made the request.

Inviting other Commonwealth Ministers to provide information

(4) The Environment Minister must:
(a) inform any other Minister who the Environment Minister believes has administrative responsibilities relating to the action of the request; and
(b) invite each Minister informed to give the Environment Minister, within 10 business days, information about whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

Inviting comments from appropriate State or Territory Minister

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

Authorised Version C2016C00777 registered 12/07/2016

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

Inviting public comment

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

78C Minister must reconsider decision and give notice of outcome

Reconsideration of decision

(1) As soon as practicable after the end of the time within which information or comments may be given under section 78B in relation to a request under section 78A to reconsider a decision about an action, the Minister must:
  (a) reconsider the decision; and
  (b) either:
    (i) confirm the decision; or
    (ii) revoke the decision in accordance with subsection 78(1), and substitute a new decision for it.

Notice of outcome of reconsideration

(2) The Minister must give written notice of the outcome of the reconsideration to:
  (a) the person who requested the reconsideration; and
  (b) the person proposing to take the action (if that person is not the person referred to in paragraph (a)); and
  (c) the designated proponent of the action (if the designated proponent is not the person referred to in paragraph (a) or (b)); and

Authorised Version C2016C00777 registered 12/07/2016

(d) if the reconsideration relates to an action referred to in subsection 78B(5)—the appropriate Minister of the State or Territory.

(3) After giving notice as described in subsection (2), the Minister must publish notice of the outcome of the reconsideration. The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way the Minister considers appropriate.

Reasons for outcome of reconsideration

(4) The Minister must give reasons for the outcome of the reconsideration to a person who:

(a) has been given notice of the outcome of the reconsideration under paragraph (2)(a), (b) or (c); and

(b) within 28 days after being given the notice, has requested the Minister to provide reasons.

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

79 Reconsideration of decision on request by a State or Territory

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

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

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

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

Authorised Version C2016C00777 registered 12/07/2016

(3) Within 20 business days after receiving a request to reconsider a decision, the Environment Minister must:

(a) reconsider the decision; and

(b) either confirm it or revoke it and substitute a new decision for it; and

(c) give written notice of the outcome of the reconsideration and reasons for the outcome to:

(i) the Minister who requested the reconsideration; and

(ii) the person proposing to take the action; and

(iii) the designated proponent of the action; and

(d) after giving notice as described in paragraph (c), publish notice of the outcome and the reasons for it in accordance with the regulations.

Note: Section 156 sets out rules about time limits.

Authorised Version C2016C00777 registered 12/07/2016

Part 8—Assessing impacts of controlled actions

Division 1—Simplified outline of this Part

80 Simplified outline of this Part

The following is a simplified outline of this Part:

This Part provides for the assessment of impacts of controlled actions, to provide information for decisions whether or not to approve the taking of the actions. However, this Part does not apply to actions that a bilateral agreement or Ministerial declaration says are to be assessed in another way.

For actions that are to be assessed under this Part, the Minister must choose one of the following methods of assessment:

(a) an accredited assessment process;

(aa) an assessment on referral information (see Division 3A);

(b) an assessment on preliminary documentation (see Division 4);

(c) a public environment report (see Division 5);

(d) an environmental impact statement (see Division 6);

(e) a public inquiry (see Division 7).

Authorised Version C2016C00777 registered 12/07/2016

Division 2—Application of this Part

81 Application

(1) This Part applies to the assessment of the relevant impacts of an action that the Minister has decided under Division 2 of Part 7 is a controlled action.

(2) This section has effect subject to sections 83 and 84.

(3) This section does not limit section 82.

82 What are the *relevant impacts* of an action?

If the Minister has decided the action is a controlled action

(1) If the Minister has decided under Division 2 of Part 7 that an action is a controlled action, the ***relevant impacts*** of the action are the impacts that the action:

(a) has or will have; or

(b) is likely to have;

on the matter protected by each provision of Part 3 that the Minister has decided under that Division is a controlling provision for the action.

If the Minister has not decided whether the action is controlled

(2) If an action is a controlled action or would be apart from Division 1, 2, 3 or 3A of Part 4 (which provide that approval under Part 9 is not needed for an action covered by a bilateral agreement or declaration)—the ***relevant impacts*** of the action are impacts that the action:

(a) has or will have; or

(b) is likely to have;

on the matter protected by each provision of Part 3 that is a controlling provision for the action or would be apart from whichever of those Divisions is relevant.

Authorised Version C2016C00777 registered 12/07/2016

Relationship between subsections (1) and (2)

(3) Subsection (1) has effect despite subsection (2).

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

(a) has or will have; or

(b) is likely to have;

on the matter.

(5) For the purposes of subsections (1) and (2), if subsection 24B(1) or 24C(1) or (3) is or would be a controlling provision for the action, then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in the Great Barrier Reef Marine Park:

(a) has or will have; or

(b) is likely to have;

on the matter.

83 This Part does not apply if action covered by bilateral agreement

(1) This Part does not apply in relation to an action if:

(a) the action is to be taken in a State or self-governing Territory; and

(b) a bilateral agreement between the Commonwealth and the State or Territory declares that actions in a class that includes the action need not be assessed under this Part; and

(c) the provision of the bilateral agreement making the declaration is in operation in relation to the action.

Note 1: Subsection (1) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

Authorised Version C2016C00777 registered 12/07/2016

Note 2: Section 47 deals with bilateral agreements making declarations described in paragraph (1)(b).

Note 2A: An action will be in a class of actions declared not to need assessment under this Part only if the action has been assessed in a manner specified in the bilateral agreement.

Note 3: Division 3 of Part 5 explains how the operation of a bilateral agreement may be ended or suspended. Also, under section 49, bilateral agreements do not operate in relation to actions in Commonwealth areas or in the Great Barrier Reef Marine Park, or actions taken by the Commonwealth or a Commonwealth agency, unless they expressly provide that they do.

(2) If the action is to be taken in 2 or more States or self-governing Territories, this section does not operate unless it operates in relation to each of those States or Territories.

84 This Part does not apply if action covered by declaration

When this Part does not apply

(1) This Part does not apply in relation to an action if:
  (a) the Minister has declared in writing that actions in a class that includes the action need not be assessed under this Part; and
  (b) the declaration is in operation.

Note: An action will be in a class of actions declared not to need assessment under this Part only if the action has been assessed in a manner specified in the declaration.

Declaration

(2) The Minister may declare in writing that actions in a specified class of actions assessed by the Commonwealth or a Commonwealth agency in a specified manner do not require assessment under this Part.

Prerequisites for making a declaration

(3) The Minister may make a declaration only if he or she is satisfied that:

Authorised Version C2016C00777 registered 12/07/2016

(a) assessment of an action in the specified manner will include assessment of the impacts the action:
  (i) has or will have; or
  (ii) is likely to have;
  on each matter protected by a provision of Part 3; and
(b) the specified manner of assessment meets the standards (if any) prescribed by the regulations; and
(c) if the taking of an action assessed in the specified manner must be approved under Part 9, he or she will receive a report including, or accompanied by, enough information about the relevant impacts of the action to let him or her make an informed decision whether or not to approve under Part 9 (for the purpose of each controlling provision) the taking of the action.

Further requirements for making a declaration

(3A) Sections 34A, 34B, 34BA, 34C, 34D, 34E and 34F apply in relation to the making of a declaration under this section in the same way that they apply to the making of a declaration under section 33.

Specified manner of assessment

(4) The manner of assessment that may be specified in a declaration includes assessment by a Commonwealth agency under a law of the Commonwealth. This does not limit subsection (2).

Publishing declaration

(5) The Minister must publish a declaration in accordance with the regulations.

Revoking declaration

(6) The Minister may, by instrument in writing published in accordance with the regulations, revoke a declaration.

Authorised Version C2016C00777 registered 12/07/2016

Minister must not give preference

(7) In making or revoking a declaration relating to an action taken:

(a) by a person for the purposes of trade between Australia and another country or between 2 States; or

(b) by a constitutional corporation;

the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Authorised Version C2016C00777 registered 12/07/2016

Division 3—Decision on assessment approach

Subdivision A—Simplified outline of this Division

85 Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister must choose one of the following ways of assessing the relevant impacts of an action the Minister has decided is a controlled action:

(a) an accredited assessment process;

(aa) an assessment on referral information;

(b) an assessment on preliminary documentation;

(c) a public environment report;

(d) an environmental impact statement;

(e) a public inquiry.

Subdivision B—Deciding on approach for assessment

87 Minister must decide on approach for assessment

Minister must choose one assessment approach

(1) The Minister must decide which one of the following approaches must be used for assessment of the relevant impacts of an action that the Minister has decided is a controlled action:

(a) assessment by an accredited assessment process;

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

(b) assessment on preliminary documentation under Division 4;

Authorised Version C2016C00777 registered 12/07/2016

(c) assessment by public environment report under Division 5;
(d) assessment by environmental impact statement under Division 6;
(e) assessment by inquiry under Division 7.

Considerations in making choice

(3) In making the decision, the Minister must consider:
(a) information relating to the action given to the Minister in the referral of the proposal to take the action; and
(b) any other information available to the Minister about the relevant impacts of the action that the Minister considers relevant (including information in a report on the impacts of actions under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
(c) any relevant information received in response to an invitation under subparagraph 74(2)(b)(ii); and
(d) the matters (if any) prescribed by the regulations; and
(e) the guidelines (if any) published under subsection (6).

Accredited assessment process

(4) The Minister may decide on an assessment by an accredited assessment process only if the Minister is satisfied that:
(a) the process is to be carried out under a law of the Commonwealth, a State or a self-governing Territory; and
(b) the process and the law meet the standards (if any) prescribed by the regulations; and
(c) the process will ensure that the relevant impacts of the action are adequately assessed; and
(d) he or she will receive a report of the outcome of the process that will provide enough information on the relevant impacts of the action to let him or her make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

Authorised Version C2016C00777 registered 12/07/2016

Assessment on referral information

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

Assessment on preliminary documentation

(5) The Minister may decide on an assessment on preliminary documentation under Division 4 only if the Minister is satisfied (after considering the matters in subsection (3)) that that approach will 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.

Guidelines for choosing assessment approach

(6) The Minister may publish in the *Gazette* guidelines setting out criteria for deciding which approach must be used for assessing the relevant impacts of an action.

88 Timing of decision on assessment approach

Initial decision

(1) The Minister must decide on the approach to be used for assessment of the relevant impacts of the action within 20 business days after the Minister receives the referral of the proposal to take the action.

Note: Section 156 sets out rules about time limits.

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

Authorised Version C2016C00777 registered 12/07/2016

purposes of deciding on the approach to be used for assessment of the relevant impacts of the action.

Time does not run while further information sought

(4) If the Minister has requested more information in relation to the action under subsection 76(1), (2) or (3) or section 89, a day is not to be counted as a business day for the purposes of subsection (1) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

Running of time may be suspended by agreement

(5) The Minister and the designated proponent of the action may agree in writing that days within a period worked out in accordance with the agreement are not to be counted as business days for the purposes of subsection (1). If the agreement is made, those days are not to be counted for the purposes of that subsection.

89 Minister may request more information for making decision

(1) If the Minister believes on reasonable grounds that the information given to the Minister in relation to an action is not enough to allow the Minister to make an informed decision on the approach to be used for assessment of the relevant impacts of the action, the Minister may request the designated proponent to provide specified information relevant to making the decision.

(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.

Authorised Version C2016C00777 registered 12/07/2016

(3) The Minister may make a request in relation to an action under this section even if the Minister has made a request under subsection 76(3) in relation to the action.

90 Directing an inquiry after starting an assessment

Application

(1) This section applies if:

(a) the Minister has made a decision (the ***first decision***) under section 87 that the relevant impacts of an action must be assessed by:

(i) assessment by public environment report under Division 5; or

(ii) assessment by environmental impact statement under Division 6; and

(b) the designated proponent publishes:

(i) a draft report under section 98 (about public environment reports); or

(ii) a draft statement under section 103 (about environmental impact statements).

Revoking and substituting decision

(2) The Minister may revoke the first decision and make another decision (the ***new decision***) under section 87 (in substitution for the first decision) that the relevant impacts of the action must be assessed by an inquiry under Division 7.

Effect of revocation and substitution

(3) When the first decision is revoked and the new decision is substituted for it:

(a) whichever of Divisions 5 and 6 applied in relation to the action because of the first decision ceases to apply in relation to the action; and

(b) Division 7 applies in relation to the action.

Authorised Version C2016C00777 registered 12/07/2016

91 Notice of decision on assessment approach

(1) Within 10 business days after making a decision on the approach to be used for assessment of the relevant impacts of an action, the Minister must:

(a) give written notice of the decision to:

(i) the person proposing to take the action; and

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

(ii) if the action is to be taken in a State or self-governing Territory and a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance)—the appropriate Minister of the State or Territory; and

(b) publish notice of the decision in accordance with the regulations.

Note 1: Section 156 sets out rules about time limits.

Note 2: Subparagraph (1)(a)(ii) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(1A) In the written notice of the decision, the Minister must also advise the person proposing to take the action that the person may elect under section 132B to submit an action management plan for approval.

Note: An action management plan is approved after a decision is made approving the taking of the action.

(2) If the Minister decided that the relevant impacts of the action are to be assessed by an accredited assessment process, the written notice and the published notice must specify the process.

Authorised Version C2016C00777 registered 12/07/2016

Division 3A—Assessment on referral information

92 Application of this Division

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

93 Recommendation report

(1) The Secretary must comply with this section within 30 business days after the Minister makes the decision under section 87.

(2) The Secretary must prepare a draft recommendation report that includes recommendations on:
  (a) whether the taking of the action should be approved under Part 9; and
  (b) if approval is recommended, any conditions that should be attached to the approval.

(3) The Secretary must publish on the internet:
  (a) the draft recommendation report; and
  (b) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing relating to the draft recommendation report or the action.

(3A) The Secretary may refuse to publish on the internet, under subsection (3), so much of the draft recommendation report as:
  (a) is:
    (i) an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
    (ii) a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

Authorised Version C2016C00777 registered 12/07/2016

(b) the Secretary is satisfied is commercial-in-confidence.

(3B) The Secretary must not be satisfied that a part of the draft recommendation report is commercial-in-confidence unless a person demonstrates to the Secretary that:

(a) release of the information in that part would cause competitive detriment to the person; and

(b) the information in that part is not in the public domain; and

(c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

(d) the information in that part is not readily discoverable.

(4) After the end of the period for comment, the Secretary must finalise the draft recommendation report, taking account of any comments received within that period.

(5) As soon as practicable after finalising the draft recommendation report, the Secretary must give the Minister:

(a) the finalised recommendation report; and

(b) either:

(i) a copy of any comments received within the period for comment; or

(ii) if no comments were received within that period—a written statement to that effect.

Authorised Version C2016C00777 registered 12/07/2016

Division 4—Assessment on preliminary documentation

94 Application of this Division

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

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

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

(2) At the same time as the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:

(a) specified information included in the referral to the Minister of the proposal to take the action; and

(b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and

(c) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.

(3) The designated proponent must comply with the direction.

Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.

Authorised Version C2016C00777 registered 12/07/2016

(4) A direction given under subsection (2) is not a legislative instrument.

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

(1) This section applies if the Minister was not satisfied, at the time of making the decision (the ***assessment approach decision***) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.

(2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the designated proponent to give the Minister specified information relevant to assessing the relevant impacts of the action, including information about strategies for mitigating any adverse impacts.

(3) Within 10 business days after receiving the information requested under subsection (2), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:

(a) specified information included in the referral to the Minister of the proposal to take the action; and

(b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and

(c) specified information relating to the action that was received in response to the Minister's request under subsection (2); and

(d) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.

(4) The designated proponent must comply with the direction.

Authorised Version C2016C00777 registered 12/07/2016

Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.

(5) A direction given under subsection (3) is not a legislative instrument.

95B Procedure after end of period for comment

Procedure if comments are received

(1) If comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as practicable after the end of that period:

(a) prepare a document that:

(i) sets out the information given to the Minister previously in relation to the action, with any changes or additions needed to take account of the comments; and

(ii) contains a summary of the comments received and how those comments have been addressed; and

(b) give the Minister:

(i) a copy of the document prepared under paragraph (a); and

(ii) a copy of the comments received.

(1A) The designated proponent is taken not to have given the Minister the documents referred to in paragraph (1)(b) if the required fee has not been paid.

(2) Within 10 business days after the designated proponent has given the Minister the documents referred to in paragraph (1)(b), the designated proponent must publish, in accordance with the regulations, a copy of the document prepared under paragraph (1)(a).

Procedure if no comments are received

(3) If no comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as

Authorised Version C2016C00777 registered 12/07/2016

practicable after the end of that period, give the Minister a written statement to that effect.

(3A) The designated proponent is taken not to have given the Minister the statement referred to in subsection (3) if the required fee has not been paid.

(4) Within 10 business days after the designated proponent has given the Minister the statement referred to in subsection (3), the designated proponent must publish, in accordance with the regulations, a copy of the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires.

Definition

(5) In this section:

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

95C Recommendation report

(1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:

(a) whether the taking of the action should be approved under Part 9; and

(b) if approval is recommended, any conditions that should be attached to the approval.

(2) The recommendation report must be given to the Minister after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires, and before the end of the period applicable under paragraph 130(1B)(c) in relation to the action.

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

Authorised Version C2016C00777 registered 12/07/2016

Division 5—Public environment reports

96 Application

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by a public environment report under this Division.

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

(1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft public environment report about the relevant impacts of the action. The guidelines so given are referred to as the ***PER guidelines***.

(2) The PER guidelines must be:

(a) one or more sets of standard guidelines prepared under section 96B that the Minister decides are appropriate for the preparation of the draft report in relation to the action; or

(b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft report in relation to the action—tailored guidelines prepared under section 97.

(3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft report in relation to the action, the Minister must seek to ensure that the draft report, if prepared in accordance with those guidelines, will:

(a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and

(b) address the matters (if any) prescribed by the regulations.

Note: Similar considerations apply in relation to tailored guidelines: see subsection 97(2).

Authorised Version C2016C00777 registered 12/07/2016

(4) The Minister must give the PER guidelines to the designated proponent:

(a) within 20 business days after the assessment approach decision was made under section 87; or

(b) if the Minister, under section 97, invites a person to comment on a draft of tailored guidelines for the preparation of the draft report within a specified period—within 20 business days after:

(i) the end of that period; or

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

96B Standard guidelines

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

Note: See also subsection 96A(3).

(2) A set of standard guidelines must set out requirements for the content and presentation of draft public environment reports about the relevant impacts of actions.

(3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:

(a) actions that are proposed to be taken by a specified industry sector; or

(b) actions for which a specified provision of Part 3 is a controlling provision.

(4) A set of standard guidelines made under this section is not a legislative instrument.

97 Tailored guidelines

(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

Authorised Version C2016C00777 registered 12/07/2016

are not appropriate for the preparation of the draft report in relation to that action.

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

(2) In preparing tailored guidelines, the Minister must seek to ensure that the draft report 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.

(3) Tailored guidelines may also provide for the draft report to include information about other certain and likely impacts of the action if:

(a) the action is to be taken in a State or self-governing Territory; and

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft report includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

(c) the action:

(i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or

(ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(3A) Tailored guidelines may also provide for the draft report to include information about other certain and likely impacts of the action if:

Authorised Version C2016C00777 registered 12/07/2016

(a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and

(b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the draft report includes information about those other impacts for the purposes of deciding whether to grant the permission.

(4) Division 2 does not limit:

(a) subsection (3) or (3A); or

(b) section 98 so far as it relates to tailored guidelines prepared in reliance on that subsection.

(5) In preparing tailored guidelines, the Minister may:

(a) invite anyone to comment on a draft of tailored guidelines within a period specified by the Minister; and

(b) take account of the comments received (if any).

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

98 Designated proponent must invite comment on draft public environment report

Designated proponent's obligations

(1) The designated proponent of the action must:

(a) prepare a draft public environment report in accordance with the PER guidelines about:

(i) the relevant impacts of the action; and

(ii) if the PER guidelines are tailored guidelines that require the draft report to include information about other impacts—those other impacts; and

(ab) give the draft report to the Minister; and

(b) obtain the Minister's approval for publication of the draft report; and

Authorised Version C2016C00777 registered 12/07/2016

(c) publish in accordance with the regulations:
(i) the draft report; and
(ii) an invitation for anyone to give the designated proponent comments in writing relating to the draft report or the action within the period specified in the invitation.

Approval of publication of draft report

(2) The Minister may only approve the publication of the draft report if he or she is satisfied that the draft report is in accordance with the PER guidelines.

Period for comment

(3) The period specified in the invitation to comment must be the period specified in writing given by the Minister to the designated proponent. The Minister must not specify a period of less than 20 business days.

99 Finalising public environment report

(1) After the end of the period specified in the invitation to comment under section 98, the designated proponent must finalise the draft public environment report.

(2) The finalised report must:
(a) take account of any comments received within the period for comment; and
(b) contain a summary of any such comments and how those comments have been addressed.

(3) As soon as practicable after finalising the draft report, the designated proponent must give the Minister:
(a) the finalised report; and
(b) either:
(i) a copy of any comments received within the period for comment; or

Authorised Version C2016C00777 registered 12/07/2016

(ii) if no comments were received within that period—a written statement to that effect.

(3A) The designated proponent is taken not to have given the Minister the documents required under subsection (3) if the required fee has not been paid.

(4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised report in accordance with the regulations.

100 Recommendation report

(1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:

(a) whether the taking of the action should be approved under Part 9; and

(b) if approval is recommended, any conditions that should be attached to the approval.

(2) The recommendation report must be given to the Minister after the Minister receives the finalised public environment report under section 99 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action.

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

Authorised Version C2016C00777 registered 12/07/2016

Division 6—Environmental impact statements

101 Application

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by an environmental impact statement under this Division.

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

(1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft environmental impact statement about the relevant impacts of the action. The guidelines so given are referred to as the ***EIS guidelines***.

(2) The EIS guidelines must be:
  (a) one or more sets of standard guidelines prepared under section 101B that the Minister decides are appropriate for the preparation of the draft statement in relation to the action; or
  (b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft statement in relation to the action—tailored guidelines prepared under section 102.

(3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft statement in relation to the action, the Minister must seek to ensure that the draft statement, if prepared in accordance with those guidelines, will:
  (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and
  (b) address the matters (if any) prescribed by the regulations.

Note: Similar considerations apply in relation to tailored guidelines: see subsection 102(2).

Authorised Version C2016C00777 registered 12/07/2016

(4) The Minister must give the EIS guidelines to the designated proponent:

(a) within 20 business days after the assessment approach decision was made under section 87; or

(b) if the Minister, under section 102, invites a person to comment on a draft of tailored guidelines for the preparation of the draft statement within a specified period—within 20 business days after:

(i) the end of that period; or

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

101B Standard guidelines

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

Note: See also subsection 101A(3).

(2) A set of standard guidelines must set out requirements for the content and presentation of draft environmental impact statements about the relevant impacts of actions.

(3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:

(a) actions that are proposed to be taken by a specified industry sector; or

(b) actions for which a specified provision of Part 3 is a controlling provision.

(4) A set of standard guidelines made under this section is not a legislative instrument.

102 Tailored guidelines

(1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft environmental impact statement about the relevant impacts of an action if the Minister decides that standard

Authorised Version C2016C00777 registered 12/07/2016

guidelines are not appropriate for the preparation of the draft statement in relation to that action.

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

(2) In preparing tailored guidelines, the Minister must seek to ensure that the draft statement 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 any matters specified by the regulations.

(3) Tailored guidelines may also provide for the draft statement to include information about other certain and likely impacts of an action if:

(a) the action is to be taken in a State or self-governing Territory; and

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft statement includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

(c) the action:

(i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or

(ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

Authorised Version C2016C00777 registered 12/07/2016

(3A) Tailored guidelines may also provide for the draft statement to include information about other certain and likely impacts of an action if:

(a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and

(b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the draft statement includes information about those other impacts for the purposes of deciding whether to grant the permission.

(4) Division 2 does not limit:

(a) subsection (3) or (3A); or

(b) section 103 so far as it relates to tailored guidelines prepared in reliance on that subsection.

(5) In preparing tailored guidelines, the Minister may:

(a) invite anyone to comment on a draft of tailored guidelines within a period specified by the Minister; and

(b) take account of the comments (if any) received.

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

103 Designated proponent must invite comment on draft environmental impact statement

Designated proponent's obligations

(1) The designated proponent of the action must:

(a) prepare a draft environmental impact statement in accordance with the EIS guidelines about:

(i) the relevant impacts of the action; and

(ii) if the EIS guidelines are tailored guidelines that require the draft statement to include information about other impacts—those other impacts; and

Authorised Version C2016C00777 registered 12/07/2016

(ab) give the draft statement to the Minister; and

(b) obtain the Minister's approval for publication of the draft statement; and

(c) publish in accordance with the regulations:

(i) the draft statement; and

(ii) an invitation for anyone to give the designated proponent comments in writing relating to the draft statement or the action within the period specified in the invitation.

Approval of publication of draft statement

(2) The Minister may only approve the publication of the draft statement if he or she is satisfied that the draft statement is in accordance with the EIS guidelines.

Period for comment

(3) The period specified in the invitation to comment must be the period specified in writing given by the Minister to the designated proponent. The Minister must not specify a period of less than 20 business days.

104 Finalising environmental impact statement

(1) After the end of the period specified in the invitation to comment under section 103, the designated proponent must finalise the draft environmental impact statement.

(2) The finalised statement must:

(a) take account of any comments received within the period for comment; and

(b) contain a summary of any such comments and how those comments have been addressed.

(3) As soon as practicable after finalising the draft statement, the designated proponent must give the Minister:

(a) the finalised statement; and

Authorised Version C2016C00777 registered 12/07/2016

(b) either:

(i) a copy of any comments received within the period for comment; or

(ii) if no comments were received within that period—a written statement to that effect.

(3A) The designated proponent is taken not to have given the Minister the documents required under subsection (3) if the required fee has not been paid.

(4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised statement in accordance with the regulations.

105 Recommendation report

(1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:

(a) whether the taking of the action should be approved under Part 9; and

(b) if approval is recommended, any conditions that should be attached to the approval.

(2) The recommendation report must be given to the Minister after the Minister receives the finalised environmental impact statement under section 104 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action.

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

Authorised Version C2016C00777 registered 12/07/2016

Division 7—Inquiries

Subdivision A—Preliminary

106 Simplified outline

The following is a simplified outline of this Division:

> This Division provides for the Minister to appoint commissions to carry out inquiries in a flexible way into the impacts of actions.
>
> Commissioners have powers to call witnesses, obtain documents and inspect places for the purposes of their inquiries.
>
> Commissioners must report to the Minister and publish their reports.

Subdivision B—Establishment of inquiries

107 Appointing commissioners and setting terms of reference

(1) If the Minister decides that the relevant impacts of an action must be assessed by inquiry under this Division, the Minister must:

(a) appoint in writing one or more persons (the ***commissioners***) as a commission to conduct the inquiry and report to the Minister in relation to the action; and

(b) specify in writing (the ***terms of reference***):

(i) the matters relating to the action that are to be the subject of the inquiry and report; and

(ii) the period within which the commission must report to the Minister.

Note 1: The Minister may revoke an appointment and amend terms of reference. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: Subdivision E contains more provisions about the basis on which a commissioner holds office.

Authorised Version C2016C00777 registered 12/07/2016

(2) If the Minister appoints 2 or more commissioners for an inquiry, the Minister must appoint one of them to preside at the inquiry.

(3) In specifying in the terms of reference the matters relating to the action that are to be the subject of the inquiry and report, the Minister:

(a) must specify the relevant impacts of the action; and

(b) if subsection (4) or (4A) applies—may specify other certain or likely impacts of the action.

(4) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:

(a) the action is to be taken in a State or self-governing Territory; and

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the inquiry reports on those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

(c) the action:

(i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or

(ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: Paragraph (4)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(4A) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:

(a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and

Authorised Version C2016C00777 registered 12/07/2016

(b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the report includes information about those other impacts for the purposes of deciding whether to grant the permission.

(5) The Minister may also specify in the terms of reference the manner in which the commission is to carry out the inquiry.

108 Publicising inquiry

(1) As soon as practicable, the commission must publish in accordance with the regulations and in any other way it thinks fit:
(a) the terms of reference; and
(b) the information relating to the action given to the Minister under this Chapter before the Minister made the decision under Division 3 to use an inquiry to assess the relevant impacts of the action.

(2) The commission need not publish the information described in paragraph (1)(b) if, before the Minister appointed the commission, the designated proponent of the action published:
(a) a draft report under section 98 (which deals with draft public environment reports); or
(b) a draft statement under section 103 (which deals with draft environmental impact statements).

However, in this case the commission must publish as described in subsection (1) notice of the fact that the draft report or draft statement has already been published.

Subdivision C—Conduct of inquiries

109 Procedure of inquiries

(1) A commission must comply with the terms of reference in conducting its inquiry.

(2) Subject to this Division, a commission:

Authorised Version C2016C00777 registered 12/07/2016

(a) may determine the procedure to be followed in its inquiry; and
(b) is not subject to any directions by an employee of the Commonwealth or by a Commonwealth agency; and
(c) is not bound by the rules of evidence.

110 Inquiry to be public

(1) A hearing held as part of an inquiry must be conducted in public, except so far as the commission directs otherwise.

(2) The commission must make publicly available (in any way the commission thinks fit) the content of any submission or evidence given to the commission in writing, except so far as the commission directs otherwise.

(3) If the commission believes that it is desirable in the public interest, the commission may:
(a) give directions that all or part of the inquiry be held in private, specifying the persons who may be present; and
(b) give directions prohibiting or restricting the publication of all or specified passages of submissions or evidence given to the commission orally or in writing.

111 Calling witnesses

Summoning witnesses

(1) A commissioner may, by writing signed by the commissioner, summon a person to appear before the commission at a time and place specified in the summons to give evidence and produce any documents mentioned in the summons.

Failure of witness to attend

(2) A person served with a summons to appear as a witness at an inquiry by a commission must not:
(a) fail to attend as required by the summons; or

Authorised Version C2016C00777 registered 12/07/2016

(b) fail to appear and report from day to day unless excused or released from further attendance by or on behalf of the commission.

Note: A defendant bears an evidential burden in relation to the excuse or release from further attendance mentioned in paragraph (2)(b). See subsection 13.3(3) of the *Criminal Code*.

Offence

(3) A person who contravenes subsection (2) commits an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

Allowances for witnesses

(4) A person summoned by a commission to appear as a witness at an inquiry is entitled to be paid by the Commonwealth such allowances for travelling and other expenses as are prescribed by the regulations.

112 Dealing with witnesses

Power to administer oath or affirmation

(1) A commissioner may administer an oath or affirmation to a person appearing as a witness before the commission.

Note: This means that proceedings before the commission are ***judicial proceedings*** for the purposes of Part III of the *Crimes Act 1914*, which creates various offences relating to judicial proceedings.

Refusal to be sworn or to answer questions

(2) A person appearing as a witness at an inquiry by a commission must not:

(a) refuse or fail to be sworn or to make an affirmation; or

(b) refuse or fail to answer a question that the person is required to answer by the commissioner (or the commissioner presiding at the inquiry if there is more than one commissioner for the inquiry); or

Authorised Version C2016C00777 registered 12/07/2016

(c) refuse or fail to produce a document that the person was required to produce by a summons served on the person.

Offence

(3) A person who contravenes subsection (2) commits an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

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

No privilege against self-incrimination

(4) An individual is not excused from answering a question or producing a document on the ground that answering the question or producing the document would tend to incriminate the individual or to expose the individual to a penalty.

Answers and documents cannot be used in criminal proceedings

(5) However, none of the following is admissible in evidence in criminal proceedings against the individual (except proceedings under section 491):

(a) the answer to the question;

(b) the production of the document;

(c) any information, document or thing obtained as a direct or indirect consequence of answering the question or producing the document.

Sworn witnesses may also give written evidence on oath

(6) A commission may permit a person who is appearing as a witness before the commission and has been sworn or has made an affirmation to give evidence by tendering a written statement and verifying it by oath or affirmation.

Authorised Version C2016C00777 registered 12/07/2016

113 Dealing with documents given to commission

Inspecting and copying documents produced or given at inquiry

(1) A commissioner, or a person assisting a commission and authorised by a commissioner to do so, may:
  (a) inspect a document produced or given to the commission; and
  (b) make a copy of, or take an extract from, the document.

Keeping documents produced or given at inquiry

(2) A commission may keep for a reasonable period a document produced or given to the commission.

114 Inspections of land, buildings and places

(1) If a commissioner, or a person authorised by a commissioner, enters any land, building or place by consent as described in section 115 or under a warrant issued under section 116, the commissioner or person may:
  (a) inspect the land, building or place; and
  (b) inspect any material on the land, or on or in the building or place.

(2) However, the commissioner or authorised person may not make the inspection if:
  (a) the person occupying or in charge of the land, building or place asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and
  (b) the commissioner or person does not produce it.

(3) A person (the ***offender***) commits an offence punishable on conviction by imprisonment for not more than 6 months if:
  (a) the offender obstructs or hinders another person; and

Authorised Version C2016C00777 registered 12/07/2016

(b) the offender knows the other person is a commissioner, or a person authorised by a commissioner, acting under subsection (1) or a warrant issued under section 116.

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* lets a court that convicts an individual of an offence impose a fine instead of, or as well as, imprisonment. The maximum fine (in penalty units) the court can impose is 5 times the maximum term of imprisonment (in months).

115 Entering premises by consent

(1) A commissioner, or a person authorised by a commissioner, may enter land, a building or a place at any reasonable time for any reasonable purpose of an inquiry, if the person (the ***occupant***) occupying or in charge of the land, building or place consents.

(2) Before obtaining the consent, the commissioner or authorised person must inform the occupant that the occupant may refuse to give consent.

(3) The commissioner or authorised person may not enter the land, building or place if:

(a) the occupant asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and

(b) the commissioner or authorised person does not produce it.

(4) An entry by a commissioner or authorised person with the occupant's consent is not lawful if the occupant's consent was not voluntary.

116 Entering premises under warrant

(1) A commissioner may apply to a magistrate for a warrant authorising the commissioner or a person authorised by the commissioner to enter any land, building or place if the commissioner has reason to believe that it is necessary or desirable

Authorised Version C2016C00777 registered 12/07/2016

for the purposes of an inquiry for the commissioner or person to enter the land, building or place for the purposes of the inquiry.

Note: Section 117 allows applications for warrants to be made by telephone.

(2) If the magistrate is satisfied by information on oath or affirmation that the issue of the warrant is reasonably required for the purposes of the inquiry, he or she may grant a warrant authorising the person named in the warrant to enter the land, building or place for the purposes specified in the warrant.

(3) The magistrate must specify in the warrant the date after which the warrant ceases to have effect.

(4) The person named in a warrant may not enter the land, building or place if:
  (a) the person occupying or in charge of the land, building or place asks the person named in the warrant to produce his or her identity card or other written evidence of his or her identity; and
  (b) the person named in the warrant does not produce it.

117 Warrants by telephone or other electronic means

Application

(1) A commissioner may apply to a magistrate for a warrant by telephone, telex, fax or other electronic means:
  (a) in an urgent case; or
  (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

Voice communication

(2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.

Authorised Version C2016C00777 registered 12/07/2016

Information

(3) An application under this section must include all information required to be provided in an ordinary application for a warrant, but the application may, if necessary, be made before the information is sworn or affirmed.

Issue of warrant

(4) The magistrate may complete and sign the same form of warrant that would be issued under section 116 if, after considering the information and having received and considered any further information he or she required, the magistrate is satisfied that:
  (a) a warrant in the terms of the application should be issued urgently; or
  (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

Notification

(5) If the magistrate decides to issue the warrant, the magistrate must inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

Form of warrant

(6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

Completed form of warrant to be given to magistrate

(7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the magistrate:
  (a) the form of warrant completed by the applicant; and

Authorised Version C2016C00777 registered 12/07/2016

(b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.

Attachment

(8) The magistrate must attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.

Presumption

(9) If:

(a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and

(b) the form of warrant signed by the magistrate is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

118 Identity cards

(1) The Minister may cause to be issued to a commissioner or a person authorised by a commissioner an identity card:

(a) in a form approved by the Minister; and

(b) containing a recent photograph of the person to whom it is issued.

(2) As soon as practicable after the commission to which the commissioner was appointed has reported to the Minister on its inquiry, the commissioner or authorised person must return his or her identity card to the Minister.

(3) A person must not contravene subsection (2).

Penalty: 1 penalty unit.

Authorised Version C2016C00777 registered 12/07/2016

119 Contempt

(1) A person commits an offence punishable on conviction by a fine of not more than 30 penalty units if:
  (a) the person insults, disturbs or uses insulting language towards another person; and
  (b) the person knows the other person is a commissioner exercising the powers or performing the functions or duties of a commissioner.

(2) A person commits an offence punishable on conviction by a fine of not more than 30 penalty units if:
  (a) the person creates a disturbance, or takes part in creating or continuing a disturbance, in or near a place; and
  (b) the person knows the place is a place where a commission is holding an inquiry.

(3) A person must not:
  (a) interrupt an inquiry by a commission; or
  (b) do any other act or thing that would, if a commission were a court of record, constitute a contempt of that court.

Penalty: 30 penalty units.

120 Protection of commissioners and witnesses

Protection of commissioners

(1) In performing his or her duties as a commissioner, a commissioner has the same protection and immunity as a Justice of the High Court.

Rights and obligations of witnesses

(2) A person appearing before a commission as a witness at an inquiry:
  (a) has the same protection as a witness in proceedings in the High Court; and

Authorised Version C2016C00777 registered 12/07/2016

(b) is subject to the same liabilities in any civil or criminal proceedings as such a witness (in addition to the penalties provided by this Division).

Interfering with witness is an offence

(3) A person must not:
(a) use violence to or inflict injury on; or
(b) cause or procure violence, damage, loss or disadvantage to; or
(c) cause or procure the punishment of;
another person (the ***witness***) because the witness will appear or did appear as a witness at an inquiry or because of any submission or evidence the witness gave to a commission.

Interference with a witness' employment

(4) An employer must not dismiss an employee, or prejudice an employee in his or her employment, because the employee appeared as a witness or gave any submission or evidence at an inquiry by a commission.

Interference with employee who proposes to give evidence

(5) An employer must not dismiss or threaten to dismiss an employee or prejudice, or threaten to prejudice, an employee in his or her employment, because the employee proposes to appear as a witness or to give a submission or evidence at an inquiry by a commission.

Offences

(6) A person who contravenes subsection (3), (4) or (5) commits an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

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

Authorised Version C2016C00777 registered 12/07/2016

Burden of proof in proceedings relating to witness

(7) In proceedings arising out of subsection (4), the employer has the burden of proving that the employee was not dismissed or prejudiced because the employee appeared as a witness or gave a submission or evidence at an inquiry by a commission, if it is established that:
  (a) the employee was dismissed from, or prejudiced in, his or her employment; and
  (b) before the employee was dismissed or prejudiced, the employee appeared as a witness, or gave any submission or evidence, at an inquiry by a commission.

Burden of proof in proceedings relating to employee proposing to give evidence

(8) In any proceedings arising out of subsection (5), the employer has the burden of proving that the employee was not dismissed, prejudiced in his or her employment or threatened with dismissal or prejudice because the employee proposed to appear as a witness or give evidence at an inquiry by a commission, if it is established that:
  (a) the employee was dismissed, prejudiced or threatened; and
  (b) the employee made the proposal before the employee was dismissed, prejudiced or threatened.

Relationship of subsections (3), (4) and (5)

(9) Subsections (4) and (5) do not limit subsection (3).

Subdivision D—Inquiry reports

121 Timing of report

The commission must report to the Minister on the inquiry within the period specified by the Minister in the terms of reference.

Authorised Version C2016C00777 registered 12/07/2016

122 Publication of report

(1) After reporting to the Minister, the commission must publish the report in accordance with the regulations.

(2) However, the commission must not publish the report so far as it sets out any submission or evidence whose publication the commission prohibited or restricted by a direction under paragraph 110(3)(b).

Subdivision E—Commissioners' terms and conditions

123 Basis of appointment

(1) A commissioner is to be appointed on a full-time basis or a part-time basis.

(2) A commissioner appointed on a full-time basis must not engage in paid employment outside the duties of the commissioner's office without the Minister's approval.

(3) A commissioner appointed on a part-time basis must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the commissioner's duties.

124 Remuneration

(1) A commissioner who is not appointed or engaged under the *Public Service Act 1999* is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, the commissioner is to be paid the remuneration that is prescribed.

(2) A commissioner is to be paid the allowances that are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Authorised Version C2016C00777 registered 12/07/2016

125 Leave of absence

(1) A commissioner appointed on a full-time basis has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant a commissioner appointed on a full-time basis leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) The commissioner (the ***presiding commissioner***) appointed to preside at an inquiry may grant leave of absence to any other commissioner for the inquiry on the terms and conditions that the presiding commissioner determines, if the other commissioner has been appointed on a part-time basis.

126 Resignation

A commissioner may resign his or her appointment by giving the Minister a written resignation.

127 Termination of appointment

(1) The Minister may terminate a commissioner's appointment for misbehaviour or physical or mental incapacity.

(2) The Minister must terminate the appointment of a commissioner if:

(a) the commissioner:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the commissioner fails, without reasonable excuse, to comply with section 128 (about disclosure of interests); or

Authorised Version C2016C00777 registered 12/07/2016

(c) the Minister becomes aware that the commissioner has a pecuniary or other interest in the subject-matter of the inquiry and the Minister considers that the commissioner should not continue to participate in the conduct of the inquiry.

(3) The Minister must terminate the appointment of a commissioner on a full-time basis if:

(a) the commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(b) the commissioner engages, except with the Minister's approval, in paid employment outside the duties of his or her office.

(4) The Minister must terminate the appointment of a commissioner on a part-time basis if:

(a) the commissioner is absent, except on leave of absence, from 3 consecutive meetings of his or her commission (if it consists of 2 or more commissioners); or

(b) the commissioner engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of his or her office.

128 Disclosure of interests

(1) A commissioner must give written notice to the Minister of all direct and indirect pecuniary interests that he or she has or acquires in a business or in a body corporate carrying on a business.

(2) If a commissioner has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties, he or she must:

(a) inform the Minister of the interest; and

(b) ensure that the interest is disclosed in the report of his or her inquiry.

Authorised Version C2016C00777 registered 12/07/2016

129 Other terms and conditions

A commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Authorised Version C2016C00777 registered 12/07/2016

Part 9—Approval of actions

Division 1—Decisions on approval and conditions

Subdivision A—General

130 Timing of decision on approval

Basic rule

(1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.

(1A) The Minister must make the decision within the relevant period specified in subsection (1B) that relates to the controlled action, or such longer period as the Minister specifies in writing.

(1B) The ***relevant period***, in relation to a controlled action, is as follows:

(a) if the action is the subject of an assessment report—the period of 30 business days beginning on the first business day after the Minister receives the assessment report;

(b) if Division 3A of Part 8 (assessment on referral information) applies to the action—the period of 20 business days beginning on the first business day after the Minister receives the finalised recommendation report under subsection 93(5);

(c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires;

(d) if Division 5 (public environment reports) or Division 6 (environmental impact statements) of Part 8 applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the finalised public

Authorised Version C2016C00777 registered 12/07/2016

environment report or the finalised environmental impact statement, as the case requires;

(e) if a commission has conducted an inquiry relating to the action—the period of 40 business days beginning on the first business day after the Minister receives the report of the commission.

*What is an **assessment report**?*

(2) An ***assessment report*** is a report given to the Minister as described in:

(a) subsection 47(4) (about assessments under a bilateral agreement); or

(b) subsection 84(3) (about assessments in a manner specified in a declaration); or

(c) subsection 87(4) (about assessments by accredited assessment processes).

Notice of extension of time

(4) If the Minister specifies a longer period for the purposes of subsection (1A), he or she must:

(a) give a copy of the specification to the person proposing to take the action; and

(b) publish the specification in accordance with the regulations.

Time does not run while awaiting advice from Independent Expert Scientific Committee

(4A) If, under section 131AB, the Minister is required to obtain advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development before making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:

(a) on or after the day the Minister requested the advice; and

(b) on or before the day on which the Minister obtains the advice.

Authorised Version C2016C00777 registered 12/07/2016

Time does not run while further information is sought

(5) If, under section 132, the Minister has requested more information for the purposes of making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

131 Inviting comments from other Ministers before decision

(1) Before the Minister (the ***Environment 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 any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action of the decision the Environment Minister proposes to make; and

(b) invite the other Minister to give the Environment Minister comments on the proposed decision within 10 business days.

(2) A Minister invited to comment may make comments that:

(a) relate to economic and social matters relating to the action; and

(b) may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

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

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

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

Authorised Version C2016C00777 registered 12/07/2016

(a) inform the person proposing to take the action, and the designated proponent of the action (if the designated proponent is not the person proposing to take the action), of:
(i) the decision the Minister proposes to make; and
(ii) if the Minister proposes to approve the taking of the action—any conditions the Minister proposes to attach to the approval; and
(b) invite each person informed under paragraph (a) to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

(2) If the Minister proposes not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must provide to each person informed under paragraph (1)(a), with the invitation given under paragraph (1)(b):
(a) a copy of whichever of the following documents applies to the action:
(i) an assessment report;
(ii) a finalised recommendation report given to the Minister under subsection 93(5);
(iii) a recommendation report given to the Minister under section 95C, 100 or 105; and
(b) any information relating to economic and social matters that the Minister has considered; and
(c) any information relating to the history of a person in relation to environmental matters that the Minister has considered under subsection 136(4); and
(d) a copy of any document, or part of a document, containing information of a kind referred to in paragraph 136(2)(e) that the Minister has considered.

(3) The Minister is not required to provide under subsection (2):
(a) information that is in the public domain; or
(b) a copy of so much of a document as is in the public domain; or

Authorised Version C2016C00777 registered 12/07/2016

(c) in the case of information referred to in paragraph (2)(b) or (c)—any conclusions or recommendations relating to that information included in documents or other material prepared by the Secretary for the Minister.

(4) The Minister must not provide under subsection (2):

(a) a copy of so much of a document as:

(i) is an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or

(ia) is a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(ii) the Minister is satisfied contains information that is commercial-in-confidence; or

(b) information that:

(i) is of such a nature that its inclusion in a document would cause that document to be an exempt document of the kind referred to in subparagraph (a)(i); or

(ii) the Minister is satisfied is commercial-in-confidence.

(5) The Minister must not be satisfied that information (including information in a document) is commercial-in-confidence unless a person demonstrates to the Minister that:

(a) release of the information would cause competitive detriment to the person; and

(b) the information is not in the public domain; and

(c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

(d) the information is not readily discoverable.

(6) In deciding whether or not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must take into account any relevant comments given to the Minister in response to an invitation given under paragraph (1)(b).

Authorised Version C2016C00777 registered 12/07/2016

(7) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to:

(a) the Minister's decision under section 133 whether or not to approve, for the purposes of a controlling provision, the taking of the action; and

(b) if the decision is to approve, for the purposes of a controlling provision, the taking of the action, and the Minister decides, under section 134, to attach conditions to the approval—the Minister's decision under section 134 to attach those conditions to the approval.

131AB Minister must obtain advice from Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development

(1) This section applies if:

(a) the taking of an action, for the purposes of a controlling provision, involves:

(i) coal seam gas development; or

(ii) large coal mining development; and

(b) the Minister believes that the taking of the action:

(i) is likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity; and

(ii) may have an adverse impact on a matter protected by a provision of Part 3.

(2) Before the Minister decides whether or not to approve, for the purposes of the controlling provision, the taking of the action, the Minister must obtain the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development.

131A Inviting public comment before decision

Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and

Authorised Version C2016C00777 registered 12/07/2016

what conditions (if any) to attach to an approval, he or she may publish on the internet:

(a) the proposed decision and, if the proposed decision is to approve the taking of the action, any conditions that the Minister proposes to attach to the approval; and

(b) an invitation for anyone to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

132 Requesting further information for approval decision

If the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to approve for the purposes of a controlling provision the taking of an action, the Minister may request any of the following to provide specified information relevant to making the decision:

(a) the person proposing to take the action;

(b) the designated proponent of the action;

(c) if a commission has conducted an inquiry under Division 7 of Part 8 relating to the action—the commission;

(d) if:

(i) the action is to be taken in a State or self-governing Territory; and

(ii) a controlling provision for the action is in Division 1 of Part 3 (about matters of national environmental significance); and

(iii) the relevant impacts of the action have been assessed under a law of the State or Territory;

the appropriate Minister of that State or Territory;

(e) any other person the Minister considers appropriate.

Authorised Version C2016C00777 registered 12/07/2016

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

(1) This section applies to an action that is to be taken in a State or self-governing Territory only if the action:

(a) is to be taken by a person for the purposes of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; or

(b) is to be taken by a constitutional corporation; or

(c) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

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

(2) However, this section does not apply to an action if:

(a) the action:

(i) is a nuclear action; or

(ii) is to be taken entirely in a Commonwealth marine area; or

(iii) is to be taken entirely on Commonwealth land; or

(iv) is to be taken by the Commonwealth or a Commonwealth agency; and

(b) the relevant impacts of the action have been assessed under Part 8.

(3) Before the Minister (the ***Environment Minister***) decides whether or not to approve for the purposes of a controlling provision the taking of the action, and what conditions (if any) to attach to an approval, the Environment Minister may request the appropriate Minister of the State or Territory to give the Environment Minister a notice stating the method that has been used to assess the certain and likely impacts of the action on things other than matters protected by the controlling provisions for the action.

Authorised Version C2016C00777 registered 12/07/2016

132B Election to have an action management plan approved after approval of the taking of an action granted

(1) A person proposing to take an action may, at any time before an approval of the taking of the action is granted under section 133, elect to submit an action management plan for approval.

(2) An election must:
  (a) be in writing; and
  (b) be given to the Minister before the Minister grants an approval under section 133.

(3) If, after making an election, the person (the ***first person***) notifies the Minister under section 156F that another person (the ***second person***) proposes to take the action instead, the second person may revoke the election made by the first person under this section.

(4) An election cannot be revoked once the Minister has granted an approval under section 133.

133 Grant of approval

Approval

(1) After receiving the assessment documentation relating to a controlled action, or the report of a commission that has conducted an inquiry relating to a controlled action, the Minister may approve for the purposes of a controlling provision the taking of the action by a person.

(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.

Content of approval

(2) An approval must:

Authorised Version C2016C00777 registered 12/07/2016

(a) be in writing; and
(b) specify the action (including any alternative proposals approved under subsection (1A)) that may be taken; and
(c) name the person to whom the approval is granted; and
(d) specify each provision of Part 3 for which the approval has effect; and
(e) specify the period for which the approval has effect; and
(f) set out the conditions attached to the approval.

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

Persons who may take action covered by approval

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

Notice of approval

(3) The Minister must:
(a) give a copy of the approval to the person named in the approval under paragraph 133(2)(c); and
(b) provide a copy of the approval to a person who asks for it (either free or for a reasonable charge determined by the Minister).

Limit on publication of approval

(4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
(a) is:
(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

Authorised Version C2016C00777 registered 12/07/2016

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in the national interest not to provide.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

Notice of refusal of approval

(7) If the Minister refuses to approve for the purposes of a controlling provision the taking of an action by the person who proposed to take the action, the Minister must give the person notice of the refusal.

Note: Under section 13 of the *Administrative Decisions (Judicial Review) Act 1977*, the person may request reasons for the refusal, and the Minister must give them.

Definition

(8) In this section:

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

(a) if the action is the subject of an assessment report—that report; or

(b) if Division 3A of Part 8 (assessment on referral information) applies to the action:

(i) the referral of the proposal to take the action; and

(ii) the finalised recommendation report relating to the action given to the Minister under subsection 93(5); or

(c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:

(i) the documents given to the Minister under subsection 95B(1), or the statement given to the

Authorised Version C2016C00777 registered 12/07/2016

Minister under subsection 95B(3), as the case requires, relating to the action; and

(ii) the recommendation report relating to the action given to the Minister under section 95C; or

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

(i) the finalised public environment report relating to the action given to the Minister under section 99; and

(ii) the recommendation report relating to the action given to the Minister under section 100; or

(e) if Division 6 of Part 8 (environmental impact statements) applies to the action:

(i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and

(ii) the recommendation report relating to the action given to the Minister under section 105.

134 Conditions of approval

Condition to inform persons taking action of conditions attached to approval

(1A) An approval of the taking of an action by a person (the ***first person***) is subject to the condition that, if the first person authorises, permits or requests another person to undertake any part of the action, the first person must take all reasonable steps to ensure:

(a) that the other person is informed of any condition attached to the approval that restricts or regulates the way in which that part of the action may be taken; and

(b) that the other person complies with any such condition.

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

Authorised Version C2016C00777 registered 12/07/2016

Generally

(1) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:

(a) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or

(b) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

Conditions to protect matters from the approved action

(2) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:

(a) protecting from the action any matter protected by a provision of Part 3 for which the approval has effect; or

(b) repairing or mitigating damage that may or will be, or has been, caused by the action to any matter protected by a provision of Part 3 for which the approval has effect.

This subsection does not limit subsection (1).

Examples of kinds of conditions that may be attached

(3) The conditions that may be attached to an approval include:

(aa) conditions requiring specified activities to be undertaken for:

(i) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or

(ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage may or will be, or has been, caused by the action); and

Authorised Version C2016C00777 registered 12/07/2016

(ab) conditions requiring a specified financial contribution to be made to a person for the purpose of supporting activities of a kind mentioned in paragraph (aa); and

(a) conditions relating to any security to be given by the holder of the approval by bond, guarantee or cash deposit:

(i) to comply with this Act and the regulations; and

(ii) not to contravene a condition attached to the approval; and

(iii) to meet any liability of a person whose taking of the action is approved to the Commonwealth for measures taken by the Commonwealth under section 499 (which lets the Commonwealth repair and mitigate damage caused by a contravention of this Act) in relation to the action; and

(b) conditions requiring the holder of the approval to insure against any specified liability of the holder to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and

(c) conditions requiring a person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth; and

(d) conditions requiring an environmental audit of the action to be carried out periodically by a person who can be regarded as being independent from any person whose taking of the action is approved; and

(e) if an election has been made, or is taken to have been made, under section 132B in respect of the approval—conditions requiring:

(i) an action management plan to be submitted to the Minister for approval, accompanied by the fee (if any) prescribed by the regulations; and

(ii) implementation of the plan so approved; and

(f) conditions requiring specified environmental monitoring or testing to be carried out; and

Authorised Version C2016C00777 registered 12/07/2016

(g) conditions requiring compliance with a specified industry standard or code of practice; and

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

This subsection does not limit the kinds of conditions that may be attached to an approval.

Note: Paragraph (e)—an election is taken to have been made if an approval is varied to add a condition requiring an action management plan, see subsection 143(1A).

Certain conditions require consent of holder of approval

(3A) The following kinds of condition cannot be attached to the approval of an action unless the holder of the approval has consented to the attachment of the condition:

(a) a condition referred to in paragraph (3)(aa), if the activities specified in the condition are not reasonably related to the action;

(b) a condition referred to in paragraph (3)(ab).

(3B) If the holder of the approval has given consent, for the purposes of subsection (3A), to the attachment of a condition:

(a) the holder cannot withdraw that consent after the condition has been attached to the approval; and

(b) any person to whom the approval is later transferred under section 145B is taken to have consented to the attachment of the condition, and cannot withdraw that consent.

Conditions attached under paragraph (3)(c)

(3C) A condition attached to an approval under paragraph (3)(c) may require a person taking the action to comply with conditions specified in an instrument of a kind referred to in that paragraph:

(a) as in force at a particular time; or

(b) as is in force or existing from time to time;

even if the instrument does not yet exist at the time the approval takes effect.

Authorised Version C2016C00777 registered 12/07/2016

Conditions attached under paragraph (3)(e)

(3D) When making a decision whether to approve an action management plan, if the Minister believes on reasonable grounds that the Minister does not have enough information to make a decision, the Minister may request the holder of the approval to provide specified information relevant to making the decision.

Considerations in deciding on condition

(4) In deciding whether to attach a condition to an approval, the Minister must consider:

(a) any relevant conditions that have been imposed, or the Minister considers are likely to be imposed, under a law of a State or self-governing Territory or another law of the Commonwealth on the taking of the action; and

(aa) information provided by the person proposing to take the action or by the designated proponent of the action; and

(b) the desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and a person taking the action to achieve the object of the condition.

Effect of conditions requiring compliance with conditions specified in another instrument

(4A) If:

(a) a condition (the ***principal condition***) attached to an approval under paragraph (3)(c) requires a person taking the action to comply with conditions (the ***other conditions***) specified in an instrument of a kind referred to in that paragraph; and

(b) the other conditions are in excess of the power conferred by subsection (1);

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

Authorised Version C2016C00777 registered 12/07/2016

Validity of decision

(5) A failure to consider information as required by paragraph (4)(aa) does not invalidate a decision about attaching a condition to the approval.

134A Inviting public comment before approving action management plan

(1) Before approving an action management plan, the Minister may publish:
  (a) the plan; and
  (b) an invitation for anyone to give the Minister, within 11 business days, written comments on the plan.

(2) The regulations may provide for requirements relating to the way the Minister must publish the plan and invitation to comment.

135 Certain approvals and conditions must not give preference

(1) This section deals with the approval:
  (a) for the purposes of section 21 or 22A of a nuclear action:
    (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
    (ii) by a constitutional corporation; or
  (b) for the purposes of section 25 of an action that is prescribed for the purposes of subsection 25(1) and is taken:
    (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
    (ii) by a constitutional corporation.

(2) The Minister must not grant the approval, or attach a condition to the approval, that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Authorised Version C2016C00777 registered 12/07/2016

135A Publication of recommendation reports

(1) This section applies in relation to the following reports:
  (a) a finalised recommendation report given to the Minister under subsection 93(5);
  (b) a recommendation report given to the Minister under section 95C, 100 or 105.

(2) Subject to subsections (3) and (4), the Secretary must provide a copy of a report to which this section applies to a person who asks for it (either at no charge or at a reasonable charge determined by the Secretary).

(3) The Secretary is not required to provide a copy of the report under subsection (2) to anyone until after the Minister has decided, for the purposes of each controlling provision, whether or not to approve the taking of the action concerned.

(4) The Secretary may refuse to provide, under subsection (2), a copy of so much of the report as:
  (a) is:
    (i) an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
    (ii) a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
  (b) the Secretary is satisfied is commercial-in-confidence.

(5) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:
  (a) release of the information in that part would cause competitive detriment to the person; and
  (b) the information in that part is not in the public domain; and

Authorised Version C2016C00777 registered 12/07/2016

(c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
(d) the information in that part is not readily discoverable.

Subdivision B—Considerations for approvals and conditions

136 General considerations

Mandatory considerations

(1) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Subdivision:
(a) matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action;
(b) economic and social matters.

Factors to be taken into account

(2) In considering those matters, the Minister must take into account:
(a) the principles of ecologically sustainable development; and
(b) the assessment report (if any) relating to the action; and
(ba) if Division 3A of Part 8 (assessment on referral information) applies to the action—the finalised recommendation report relating to the action given to the Minister under subsection 93(5); and
(bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
(i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
(ii) the recommendation report relating to the action given to the Minister under section 95C; and

Authorised Version C2016C00777 registered 12/07/2016

(c) if Division 5 (public environment reports) of Part 8 applies to the action:
  (i) the finalised public environment report relating to the action given to the Minister under section 99; and
  (ii) the recommendation report relating to the action given to the Minister under section 100; and

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

(d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action—the report of the commissioners; and

(e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and

(f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and

(fa) any relevant advice obtained by the Minister from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development in accordance with section 131AB; 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).

Person's environmental history

(4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister

Authorised Version C2016C00777 registered 12/07/2016

may consider whether the person is a suitable person to be granted an approval, having regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

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

Minister not to consider other matters

(5) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must not consider any matters that the Minister is not required or permitted by this Division to consider.

137 Requirements for decisions about World Heritage

In deciding whether or not to approve, for the purposes of section 12 or 15A, the taking of an action and what conditions to attach to such an approval, the Minister must not act inconsistently with:

(a) Australia's obligations under the World Heritage Convention; or

(b) the Australian World Heritage management principles; or

(c) a plan that has been prepared for the management of a declared World Heritage property under section 316 or as described in section 321.

137A Requirements for decisions about National Heritage places

In deciding whether or not to approve for the purposes of section 15B or 15C the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:

(a) the National Heritage management principles; or

Authorised Version C2016C00777 registered 12/07/2016

(b) an agreement to which the Commonwealth is party in relation to a National Heritage place; or

(c) a plan that has been prepared for the management of a National Heritage place under section 324S or as described in section 324X.

138 Requirements for decisions about Ramsar wetlands

In deciding whether or not to approve for the purposes of section 16 or 17B the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention.

139 Requirements for decisions about threatened species and endangered communities

(1) In deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES; or

(b) a recovery plan or threat abatement plan.

(2) If:

(a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and

(b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;

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

Authorised Version C2016C00777 registered 12/07/2016

140 Requirements for decisions about migratory species

In deciding whether or not to approve for the purposes of section 20 or 20A the taking of an action relating to a listed migratory species, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under whichever of the following conventions and agreements because of which the species is listed:

(a) the Bonn Convention;
(b) CAMBA;
(c) JAMBA;
(d) an international agreement approved under subsection 209(4).

140A No approval for certain nuclear installations

The Minister must not approve an action consisting of or involving the construction or operation of any of the following nuclear installations:

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

Authorised Version C2016C00777 registered 12/07/2016

Division 2—Requirement to comply with conditions

142 Compliance with conditions on approval

(1) A person whose taking of an action has been approved under this Part must not contravene any condition attached to the approval.

Civil penalty:

(a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;

(b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.

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

(a) the person was not informed of the condition; and

(b) the person could not reasonably have been expected to be aware of the condition.

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

(2) A contravention of a condition attached to an approval under this Part does not invalidate the approval.

142A Offence of breaching conditions on approval

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

(a) the person takes an action or omits to take an action; and

(b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and

(c) the action or omission results or will result in a significant impact on a matter protected by a provision of Part 3.

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

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

Authorised Version C2016C00777 registered 12/07/2016

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

(3) A person whose taking of an action has been approved under this Part commits an offence if:

(a) the person takes an action or omits to take an action; and

(b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and

(c) the action or omission is likely to have a significant impact on a matter protected by a provision of Part 3 and the person is reckless as to that fact.

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

(4) An offence against subsection (1) or (3) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

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

142B Strict liability offence for breach of approval condition

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

(a) the person takes an action or omits to take an action; and

(b) the action or omission contravenes a condition attached to the approval.

Penalty: 60 penalty units.

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

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

Authorised Version C2016C00777 registered 12/07/2016

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

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

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

(a) the person was not informed of the condition; and

(b) the person could not reasonably have been expected to be aware of the condition.

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

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

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

Authorised Version C2016C00777 registered 12/07/2016

Division 3—Variation of conditions and suspension and revocation of approvals

143 Variation of conditions attached to approval

(1) The Minister may, by written instrument, revoke, vary or add to any conditions (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if:

(a) any condition attached to the approval has been contravened; or

(b) both of the following conditions are satisfied:

(i) the action has had a significant impact that was not identified in assessing the action on any matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;

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

(ba) all of the following conditions are satisfied:

(i) the action has had a significant impact on a matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;

(ii) the Minister is satisfied that the impact is substantially greater than the impact that was identified in assessing the action;

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

(c) the holder of the approval agrees to the proposed revocation, variation or addition, or the Minister has extended the period for which the approval has effect under section 145D, and the Minister is satisfied that any conditions attached to the approval after the proposed revocation, variation or addition are necessary or convenient for:

Authorised Version C2016C00777 registered 12/07/2016

(i) protecting a matter protected by any provision of Part 3 for which the approval has effect; or

(ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

(1A) If, under paragraph (1)(c), the holder of an approval agrees to conditions mentioned in paragraph 134(3)(e) (about an action management plan) being added and attached to the approval, the holder is taken to have made an election under section 132B before the approval was granted.

(1B) The holder of an approval may request the Minister, in writing, to vary a condition attached to an approval of an action.

(2) The Minister may, by written instrument, revoke any condition (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if the Minister is satisfied that the condition is not needed to protect any matter protected by a provision of Part 3 for which the approval has effect.

(3) In deciding whether or not to revoke, vary or add to any conditions attached to the approval of the taking of an action by a person, the Minister may have regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

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

(4) The revocation, variation or addition takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.

(5) As soon as possible after making the instrument, the Minister must:

Authorised Version C2016C00777 registered 12/07/2016

(a) give a copy of it to the holder of the approval; and
(b) publish the instrument in accordance with the regulations.

Note: If the holder is not satisfied with changed conditions attached to the approval of the holder's action, he or she can ask the Minister to reverse the change by making another change to the conditions under this section.

(6) However, the Minister must not publish so much of the instrument as:
(a) is:
(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or
(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
(b) the Minister believes it is in the national interest not to publish.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

143A Variation of action management plan

Written application required

(1) If an action management plan is a condition of an approval of an action, the holder of the approval may, at any time, apply to the Minister for a variation of the action management plan.

(2) An application for a variation must be:
(a) in writing; and
(b) accompanied by:
(i) any information or documents required by the regulations; and
(ii) the application fee (if any) prescribed by the regulations.

Authorised Version C2016C00777 registered 12/07/2016

Minister may approve a variation of action management plan

(3) The Minister may approve a variation to an action management plan if requested to do so.

(4) When making a decision whether to vary an action management plan, if the Minister believes on reasonable grounds that the application does not include enough information, the Minister may request the applicant to provide specified information relevant to making the decision.

(5) If the holder of an approval applies for a variation of an action management plan, the Minister must notify the person, in writing, of the Minister's decision.

144 Suspension of approval

(1) The Minister may, by written instrument, suspend the effect of an approval under this Part for the purposes of a specified provision of Part 3 for a specified period (which must not start before the day on which the instrument is made) if the Minister believes on reasonable grounds that:

(a) a significant impact on the matter protected by the provision has occurred because of the contravention of a condition attached to the approval; or

(b) the conditions specified in subsection (2) are satisfied.

(2) The conditions are that:

(a) the action has had, or the Minister believes that the action will have, a significant impact that was not identified in assessing the action on a matter protected by a provision of Part 3 for which the approval has effect; and

(b) the approval would not have been granted if information that the Minister has about that impact had been available when the decision to approve the action was made.

(2A) The Minister may, by written instrument, suspend the effect of an approval under this Part for the purposes of a specified provision of

Authorised Version C2016C00777 registered 12/07/2016

Part 3 for a specified period (which must not start before the day on which the instrument is made) if:

(a) either:

(i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or

(ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within a particular time—the Minister believes on reasonable grounds that the thing has not been done within that time; and

(b) the Minister is satisfied that:

(i) the approval would not have been granted without that condition being attached; or

(ii) because of the failure to comply with the requirement, the suspension is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.

(3) In deciding whether or not to suspend an approval of the taking of an action by a person, the Minister may have regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

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

(4) During the specified period, the specified provision of Part 3 applies as if the Minister had not given the approval.

(5) As soon as possible after making the instrument, the Minister must:

(a) give a copy of it to the holder of the approval; and

(b) publish the instrument in accordance with the regulations.

Authorised Version C2016C00777 registered 12/07/2016

145 Revocation of approval

(1) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:

(a) a significant impact on the matter protected by the provision has occurred because of the contravention of a condition attached to the approval; or

(b) the conditions specified in subsection (2) are satisfied.

(2) The conditions are that:

(a) the action has had, or the Minister believes that the action will have, a significant impact that was not identified in assessing the action on a matter protected by a provision of Part 3 for which the approval has effect; and

(b) the approval would not have been granted if information that the Minister has about that impact had been available when the decision to approve the action was made.

(2A) The Minister may, by written instrument, revoke an approval under this Part of an action for the purposes of a specified provision of Part 3 if he or she believes that:

(a) the impacts that the action has had, will have or is likely to have were not accurately identified in information available to the Minister when the approval was given; and

(b) the information did not accurately identify those impacts because of negligence or a deliberate act or omission by the person proposing to take the action or the designated proponent of the action.

(2B) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:

(a) either:

(i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or

(ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within a particular time—the Minister believes on reasonable

Authorised Version C2016C00777 registered 12/07/2016

grounds that the thing has not been done within that time; and

(b) the Minister is satisfied that:

(i) the approval would not have been granted without that condition being attached; or

(ii) because of the failure to comply with the requirement, the revocation is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.

(3) In deciding whether or not to revoke an approval of the taking of an action by a person, the Minister may have regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

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

(4) The revocation takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.

(5) As soon as possible after making the instrument, the Minister must:

(a) give a copy of it to the person who was the holder of the approval; and

(b) publish the instrument in accordance with the regulations.

145A Reinstating suspended or revoked approval

Application

(1) This section applies if the Minister has, by written instrument:

(a) suspended an approval under this Part of the taking of an action by a person; or

Authorised Version C2016C00777 registered 12/07/2016

(b) revoked an approval under this Part of the taking of an action by a person.

Requesting reinstatement of approval

(2) Within 2 months after receiving a copy of the instrument under this Division, the person who was the holder of the approval may request the Minister to reinstate the approval.

Deciding whether to reinstate approval

(3) Within 20 business days of receiving the request, the Minister must decide whether or not to reinstate the approval.

Considerations for decision

(4) Subdivision B of Division 1 applies to the decision whether or not to reinstate the approval in the same way as it applies to a decision whether or not to approve the taking of an action.

Extra time for decision

(5) A day is not to be counted for the purposes of subsection (3) if:
(a) the Minister and the person who was the holder of the approval agree in writing that it should not be counted; or
(b) the Minister has requested the person to provide information under subsection (6) and the day is on or before the day on which the Minister receives the last of the information requested.

Requesting information for decision

(6) If the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to reinstate the approval, the Minister may request the person who was the holder of the approval to provide specified information relevant to making the decision.

Authorised Version C2016C00777 registered 12/07/2016

Reversal of decision to suspend or revoke approval

(7) If the Minister decides to reinstate the approval, it and any conditions attached to it immediately before the suspension or revocation have effect on and after the day of the decision (subject to any future suspension or revocation under this Division).

Notice of decision about reversal

(8) The Minister must:
  (a) give the person who was the holder of the approval written notice of the Minister's decision; and
  (b) publish notice of the decision in accordance with the regulations.

Authorised Version C2016C00777 registered 12/07/2016

Division 4—Transfer of approvals

145B Transfer with Minister's consent

Transfer by written agreement

(1) A person (the ***transferor***) who is the holder of an approval under this Part for the purposes of a provision of Part 3 may transfer the approval to another person (the ***transferee***) by written agreement, subject to the Minister's consent.

Transfer ineffective until Minister consents

(2) The transfer does not have effect for the purposes of this Act until the Minister consents in writing to the transfer. To avoid doubt, the Minister's consent to a transfer cannot take effect before the Minister gives the consent.

Effect of consent

(3) If the Minister consents to the transfer:
  (a) this Act (except Division 3) operates in relation to the transferor as if the Minister had revoked the approval when the Minister's consent took effect; and
  (b) this Act operates in relation to the transferee as if, when the Minister's consent to the transfer took effect, he or she:
    (i) had approved under this Part for the purposes of the provision of Part 3 the taking of the action by the transferee; and
    (ii) had attached to the approval the conditions that were attached to the approval of the taking of the action by the transferor.

Considerations in deciding whether to consent

(4) In deciding whether or not to consent to the transfer, the Minister may consider:

Authorised Version C2016C00777 registered 12/07/2016

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

Giving copies of consents to transferor and transferee

(5) The Minister must give the transferor and the transferee a copy of the consent each.

Authorised Version C2016C00777 registered 12/07/2016

Division 5—Extension of period of effect of approval

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

(1) Subject to subsection (2), the holder of an approval under this Part may apply, in writing, to the Minister to extend the period (the ***approval period***) for which the approval has effect.

(2) Subsection (1) does not apply if:
  (a) the approval has been suspended or revoked under this Part and has not been reinstated; or
  (b) the approval has otherwise ceased to have effect.

(3) An application under subsection (1) must include the information (if any) prescribed by the regulations.

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

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

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

(2) The Minister may decide to extend the approval period only if the Minister is satisfied that the extension will not result in a substantial increase in, or substantial change in the nature of, the adverse impacts (if any) the action:
  (a) has or will have; or
  (b) is likely to have;
on the matter protected by each provision of Part 3 for which the approval has effect.

(3) In considering the matter referred to in subsection (2), the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Division:

Authorised Version C2016C00777 registered 12/07/2016

(a) matters relevant to any matter protected by a provision of Part 3 for which the approval has effect;
(b) economic and social matters.

(4) As soon as possible after deciding whether or not to extend the approval period, the Minister must:
(a) give a copy of the decision to the holder of the approval; and
(b) if the decision is to extend the approval period—publish the decision in accordance with the regulations.

145E Minister may request further information for making decision

(1) If the Minister believes on reasonable grounds that he or she does not have enough information to decide whether or not to extend the approval period, the Minister may request the holder of the approval to provide specified information relevant to making the decision.

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

Authorised Version C2016C00777 registered 12/07/2016

Part 10—Strategic assessments

Division 1—Strategic assessments generally

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

146 Minister may agree on strategic assessment

(1) The Minister may agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3.

(1A) The agreement may also provide for the assessment of other certain and likely impacts of actions under the policy, plan or program if:

(a) the actions are to be taken in a State or self-governing Territory; and

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the assessment deal with those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the actions; and

(c) the actions:

(i) are to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or

(ii) are actions whose regulation is appropriate and adapted to give effect to Australia's obligation under an agreement with one or more other countries.

Note: Paragraph (1A)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(1B) The agreement must provide for:

Authorised Version C2016C00777 registered 12/07/2016

(a) the preparation of terms of reference for a report on the impacts to which the agreement relates; or

(b) all of the following:

(i) the preparation of draft terms of reference for a report on the impacts to which the agreement relates;

(ii) the publication of the draft terms of reference for public comment for a period of at least 28 days that is specified by the Minister;

(iii) the finalisation of the terms of reference, to the Minister's satisfaction, taking into account the comments (if any) received on the draft terms of reference.

(2) The agreement must provide for:

(a) the preparation of a draft of a report on the impacts to which the agreement relates; and

(b) the publication of the draft report for public comment for a period of at least 28 days that is specified by the Minister; and

(c) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and

(d) the provision of the report to the Minister; and

(e) the making of recommendations by the Minister to the person about the policy, plan or program (including recommendations for modification of the policy, plan or program); and

(f) the endorsement of the policy, plan or program by the Minister if he or she is satisfied that:

(i) the report adequately addresses the impacts to which the agreement relates; and

(ii) either the recommended modifications of the policy, plan or program (if any) have been made or any modifications having the same effect have been made; and

(g) any other matter prescribed by the regulations.

Authorised Version C2016C00777 registered 12/07/2016

Note 1: If the impacts of actions under a policy, plan or program are assessed under an agreement under this Part, the Minister may decide on a less onerous approach for an assessment relating to an individual action under the policy, plan or program. See section 87.

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

(3) If the agreement relates to actions to be taken in a State or self-governing Territory, the Minister must tell the appropriate Minister of the State or Territory:

(a) that the agreement has been made; and

(b) what those actions are (in general terms).

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

146A Definition

In this Subdivision and Subdivision C:

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

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

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

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

(2) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program must:

Authorised Version C2016C00777 registered 12/07/2016

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

(2A) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program may specify the person or persons who may take the action or an action in the class of actions.

(3) The Minister must:
(a) give a copy of the approval to the person responsible for the adoption or implementation of the endorsed policy, plan or program; and
(b) provide a copy of the approval to a person who asks for it (either at no charge or for a reasonable charge determined by the Minister).

(4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
(a) is:
(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets); or
(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
(b) the Minister believes it is in the national interest not to provide.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

Authorised Version C2016C00777 registered 12/07/2016

(5) An approval given under subsection (1) is not a legislative instrument.

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

(1) Before the Minister (the ***Environment Minister***) decides whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program, he or she must:

(a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action or class of actions of the decision the Environment Minister proposes to make; and

(b) invite each Minister informed to give the Environment Minister, within 10 business days, comments on the proposed decision.

(2) A Minister who is invited to comment may make comments:

(a) that relate to economic and social matters relating to the action or class of actions to which the proposed decision relates; and

(b) that may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

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

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

(1) If an approval under section 146B is in force, the following provisions have effect:

(a) the Minister is taken to have decided under Division 2 of Part 7 that:

(i) each action specified in the approval under paragraph 146B(2)(b), or each action in a class of

Authorised Version C2016C00777 registered 12/07/2016

actions specified in the approval under that paragraph, is a controlled action; and

(ii) each provision of Part 3 specified in the approval under paragraph 146B(2)(c) is a controlling provision for each such controlled action;

(b) the Minister is taken to have approved under Part 9, for the purposes of each controlling provision for each controlled action, the taking of the action by any of the following:

(i) the person or persons (if any) specified in the approval under subsection 146B(2A) as the person or persons who may take the action;

(ii) any other person who may take the action in accordance with the endorsed policy, plan or program.

(2) Parts 7 and 8 and paragraph 170A(c) do not apply in relation to an action if an approval of the taking of the action, or an approval of the taking of a class of actions that includes the action, in accordance with an endorsed policy, plan or program is in force under section 146B.

(3) Subject to subsection (4), section 134 and Divisions 2, 3 and 4 of Part 9 apply in relation to an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b).

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

(4) Subsection 145A(4) applies in relation to a decision whether or not to reinstate an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b), as if:

(a) the reference to Subdivision B of Division 1 of Part 9 were a reference to Subdivision C of this Division; and

(b) the reference to a decision whether or not to approve the taking of an action were a reference to a decision whether or not to approve, under this Subdivision, the taking of an action in accordance with an endorsed policy, plan or program.

Authorised Version C2016C00777 registered 12/07/2016

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

146E Minister must comply with this Subdivision

The Minister must comply with this Subdivision in deciding:

(a) whether or not to approve, under section 146B, the taking of an action or a class of actions in accordance with an endorsed policy, plan or program; and

(b) in the case of a decision to approve the taking of such an action or class of actions, what conditions (if any) to attach to the approval.

Note: For the meaning of ***endorsed policy, plan or program***, see section 146A.

146F General considerations

(1) The Minister must consider the following, so far as they are not inconsistent with any other requirements of this Subdivision:

(a) matters relevant to any matter protected by a provision of Part 3 that the Minister considers is relevant to the approval;

(b) economic and social matters.

(2) In considering those matters, the Minister must take into account the principles of ecologically sustainable development.

146G Approvals relating to declared World Heritage properties

If the approval relates to a declared World Heritage property, the Minister must not act inconsistently with:

(a) Australia's obligations under the World Heritage Convention; or

(b) the Australian World Heritage management principles; or

(c) a plan that has been prepared for the management of the declared World Heritage property under section 316 or as described in section 321.

Authorised Version C2016C00777 registered 12/07/2016

146H Approvals relating to National Heritage places

If the approval relates to a National Heritage place, the Minister must not act inconsistently with:

(a) the National Heritage management principles; or

(b) an agreement to which the Commonwealth is party in relation to the National Heritage place; or

(c) a plan that has been prepared for the management of the National Heritage place under section 324S or as described in section 324X.

146J Approvals relating to declared Ramsar wetlands

If the approval relates to a declared Ramsar wetland, the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention.

146K Approvals relating to listed threatened species and ecological communities

(1) This section applies if the approval relates to a listed threatened species or a listed threatened ecological community.

(2) The Minister must not act inconsistently with:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES; or

(b) a recovery plan for the species or community or a threat abatement plan.

(3) The Minister must have regard to any approved conservation advice for the species or community.

Authorised Version C2016C00777 registered 12/07/2016

146L Approvals relating to listed migratory species

If the approval relates to a listed migratory species, the Minister must not act inconsistently with whichever of the following conventions or agreements because of which the species is listed:

(a) the Bonn Convention;

(b) CAMBA;

(c) JAMBA;

(d) an international agreement approved under subsection 209(4).

146M No approvals relating to nuclear actions

The Minister must not approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program if the action, or an action in the class of actions, consists of, or involves the construction or operation of, any of the following nuclear installations:

(a) a nuclear fuel fabrication plant;

(b) a nuclear power plant;

(c) an enrichment plant;

(d) a reprocessing facility.

Authorised Version C2016C00777 registered 12/07/2016

Division 2—Assessment of Commonwealth-managed fisheries

147 Simplified outline of this Division

The following is a simplified outline of this Division:

The Australian Fisheries Management Authority must make agreements under Division 1 for the assessment of actions in fisheries managed under the *Fisheries Management Act 1991*. An agreement must be made whenever it is proposed to make a management plan or a determination not to have a plan. An agreement must be made within 5 years of the commencement of this Act for all fisheries that did not have plans at that commencement.

The Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under Division 1 for the assessment of actions permitted by policies or plans for managing fishing in Torres Strait. All policies or plans must be covered by an agreement within 5 years after the commencement of this Act.

A further agreement for assessment must be made if the impact of the actions is significantly greater than assessed under an earlier agreement.

If the Minister endorses a policy or plan assessed under an agreement under Division 1, the Minister must make a declaration that actions under the policy or plan do not need approval under Part 9 for the purposes of section 23 or 24A (which protect the marine environment).

Authorised Version C2016C00777 registered 12/07/2016

148 Assessment before management plan is determined

Plans under the Fisheries Management Act 1991

(1) Before the Australian Fisheries Management Authority determines a plan of management for a fishery under section 17 of the *Fisheries Management Act 1991*, the Authority must:

(a) make an agreement with the Minister under section 146 for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and

(b) consider any recommendations made by the Minister under the agreement.

Plans under the Torres Strait Fisheries Act 1984

(2) Before the Minister administering the *Torres Strait Fisheries Act 1984* determines a plan of management for a fishery under section 15A of that Act, he or she must:

(a) make an agreement under section 146 with the Minister (the ***Environment Minister***) administering this section for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and

(b) consider any recommendations made by the Environment Minister under the agreement.

149 Assessment before determination that no plan required

Before the Australian Fisheries Management Authority determines under subsection 17(1A) of the *Fisheries Management Act 1991* that a plan of management is not warranted for a fishery, the Authority must:

(a) make an agreement with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions permitted under the Authority's policy for managing the fishery; and

(b) consider any recommendations made by the Minister under the agreement.

Authorised Version C2016C00777 registered 12/07/2016

150 Assessment of all fisheries without plans must be started within 5 years

Fisheries managed under the Fisheries Management Act 1991

(1) This section applies to fisheries (as defined in the *Fisheries Management Act 1991*):

(a) that are managed under that Act (whether as a result of arrangements under section 71 or 72 of that Act or not); and

(b) for which there were not plans of management in force under that Act when this Act commenced.

Two-thirds of fisheries to be covered by agreements in 3 years

(2) Before the day that is the third anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing at least $^{2}/_{3}$ of the fisheries.

All fisheries to be covered by agreements in 5 years

(3) Before the day that is the fifth anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing the fisheries.

Agreement not needed if fishery already subject to agreement

(4) However, subsection (3) does not require another agreement to be made in relation to a fishery if an agreement relating to the fishery has been made, before the day mentioned in that subsection, by the Authority and the Minister under section 146 because of subsection 148(1) or section 149.

Authorised Version C2016C00777 registered 12/07/2016

151 Assessment of all Torres Strait fisheries to be started within 5 years

Fisheries managed under the Torres Strait Fisheries Act 1984

(1) This section applies to actions that:

(a) are involved in fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act); and

(b) were not covered by a plan of management in force under section 15A of that Act when this Act commenced.

Policies for all actions to be covered by agreements in 5 years

(2) Before the day that is the fifth anniversary of this Act commencing, the Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under section 146 with the Minister administering this section for assessment of the impacts of the actions on each matter protected by a provision of Part 3, being actions that are permitted by policies under that Act.

Agreement not needed if fishery already subject to agreement

(3) However, subsection (2) does not require another agreement to be made in relation to actions if an agreement covering them has been made under section 146, before the day mentioned in that subsection, by the Ministers mentioned in that subsection because of subsection 148(2).

152 Further assessment if impacts greater than previously assessed

Application

(1) This section applies if the Minister (the ***Environment Minister***) and the Minister administering the *Fisheries Management Act 1991* agree that the impacts that actions:

(a) included in a fishery managed under that Act; or

Authorised Version C2016C00777 registered 12/07/2016

(b) permitted under a policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act);

have, will have or are likely to have on a matter protected by a provision of Part 3 are significantly greater than the impacts identified in the most recent report provided to the Environment Minister under an agreement made under section 146 relating to the fishery, policy or plan.

Further assessment for management arrangements under the Fisheries Management Act 1991

(2) The Australian Fisheries Management Authority must make another agreement with the Minister under section 146 in relation to the Authority's policy for managing the fishery.

Further assessment for policy or plan for Torres Strait fishing

(3) The Minister administering the *Torres Strait Fisheries Act 1984* must make another agreement under section 146 in relation to the policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act).

153 Minister must make declaration if he or she endorses plan or policy

(1) This section applies if:

(a) the Minister makes an agreement under section 146 as required by this Division and endorses under the agreement:

(i) a plan of management under the *Fisheries Management Act 1991* for a fishery; or

(ii) policies of the Australian Fisheries Management Authority for managing a fishery for which there is not a plan of management under the *Fisheries Management Act 1991*; or

(iii) a plan of management under the *Torres Strait Fisheries Act 1984* for a fishery; or

Authorised Version C2016C00777 registered 12/07/2016

(iv) policies for managing fishing under the *Torres Strait Fisheries Act 1984*; and

(b) the Minister accredits, under subsection 33(3) of this Act, as an accredited arrangement a management plan or regime consisting of the endorsed plan or policies.

(2) The Minister must make a declaration under section 33 that actions approved in accordance with the accredited arrangement do not require an approval under Part 9 for the purposes of subsection 23(1), (2) or (3) or subsection 24A(1), (2), (3), (4), (5) or (6).

Note: The declaration and accreditation will allow actions that would otherwise be prohibited by sections 23 and 24A to be taken without approval if they are taken in accordance with the accredited arrangement. See section 32.

154 This Division does not limit Division 1

This Division does not limit Division 1.

Authorised Version C2016C00777 registered 12/07/2016

Part 11—Miscellaneous rules about assessments and approvals

Division 1—Rules about timing

155 This Chapter ceases to apply to lapsed proposals

(1) If:

(a) a person who proposes to take a controlled action or is the designated proponent of an action is required or requested under this Chapter to do something; and

(b) the person does not do the thing within a period that the Minister believes is a reasonable period;

the Minister may give the person a written notice inviting the person to satisfy the Minister within a specified reasonable period that assessment of the action should continue or that the Minister should make a decision about approving the action.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* explain how documents may be served and when they are taken to be served.

(2) If, by the end of the specified period, the person fails to satisfy the Minister that assessment of the action should continue or that the Minister should make a decision about approving the action, the Minister may declare in writing that this Chapter no longer applies to the action.

(3) This Chapter (apart from this section) ceases to apply in relation to the action on the date specified in the declaration. The Minister must not specify a date earlier than the date of making of the declaration.

(4) The Minister must:

(a) give a copy of the declaration to the person and to the Secretary; and

(b) publish the declaration in accordance with the regulations.

Authorised Version C2016C00777 registered 12/07/2016

156 General rules about time limits

(1) If this Chapter specifies a time limit in business days in relation to a controlled action (or an action that the Minister believes may be or is a controlled action), the limit is to be worked out by reference to what is a business day in the place where the action is to be taken.

(2) A day is not to be counted as a business day for the purposes of subsection (1) if it is not a business day in all the places in which the action is to be taken.

(3) Failure to comply with a time limit set in this Chapter does not affect the validity of:

(a) a decision under this Chapter; or

(b) an assessment or approval under this Chapter.

Note: The Minister must make a statement to Parliament about some failures to comply with time limits. See section 518.

Authorised Version C2016C00777 registered 12/07/2016

Division 1A—Variation of proposals to take actions

156A Request to vary proposal to take an action

(1) If:

(a) a proposal (the ***original proposal***) by a person to take an action has been referred to the Minister under Division 1 of Part 7; and

(b) after the referral is made, the person wishes to change the original proposal;

the person may, subject to subsection (2), request the Minister to accept a variation (a ***varied proposal***) of the original proposal.

(2) Subsection (1) does not apply if:

(a) the Minister has made a decision under section 74A to not accept the referral of the original proposal; or

(b) the Minister has made a decision under section 75 that the proposed action is not a controlled action; or

(c) a particular manner for taking the proposed action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action; or

(d) the Minister has made a decision under section 133 approving or refusing to approve the taking of the proposed action; or

(e) the referral of the original proposal has been withdrawn under section 170C.

(3) A request under subsection (1) must:

(a) be made in a way prescribed by the regulations; and

(b) include the information prescribed by the regulations.

(4) If a request is made under subsection (1), any provisions of this Chapter that would, apart from this subsection, have applied in relation to the original proposal cease to apply to that proposal.

Note: Provisions that have ceased to apply in relation to the original proposal under subsection (4) will start to apply to that proposal, or to

Authorised Version C2016C00777 registered 12/07/2016

the varied proposal, after the Minister has decided whether or not to accept the varied proposal. See section 156D.

156B Minister must decide whether or not to accept a varied proposal

(1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal.

Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C.

(2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. This subsection does not limit the matters the Minister may consider in deciding whether or not to accept the varied proposal.

(3) In considering, for the purposes of subsection (2), whether or not the character of the varied proposal is substantially the same as the character of the original proposal, the Minister must have regard to the change (if any) in:

(a) the nature of the activities proposed to be carried out in taking the action; and

(b) the nature and extent of the impacts (if any) the action:

(i) has or will have; or

(ii) is likely to have;

on the matter protected by each provision of Part 3.

156C Minister may request further information in relation to a varied proposal

(1) If the Minister believes on reasonable grounds that a request under subsection 156A(1) to accept a varied proposal to take an action does not include enough information for the Minister to decide whether or not to accept the varied proposal, the Minister may

Authorised Version C2016C00777 registered 12/07/2016

request the person proposing to take the action to provide specified information relevant to making the decision.

(2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the purposes of subsection 156B(1) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

156D Effect of Minister's decision to accept or not accept a varied proposal

(1) If the Minister decides to accept a varied proposal to take an action:

(a) any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to the varied proposal; and

(b) for the purpose of the application of those provisions, anything done in relation to the original proposal is taken to have been done in relation to the varied proposal.

(2) If the Minister decides not to accept a varied proposal to take an action, any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to that proposal.

(3) For the purpose of the application of the provisions of this Chapter in relation to the varied proposal under subsection (1), or in relation to the original proposal under subsection (2), a day is not to be counted as a business day if it is:

(a) on or after the day the Minister received the request under subsection 156A(1) to accept the varied proposal; and

(b) on or before the day the Minister made the decision under subsection 156B(1).

Authorised Version C2016C00777 registered 12/07/2016

156E Notice of decision

(1) Within 10 business days after deciding under subsection 156B(1) whether or not to accept a varied proposal to take an action, the Minister must give written notice of the decision to:
  (a) the person proposing to take the action; and
  (b) the designated proponent of the action (if the designated proponent of the action is not the person proposing to take the action).

(2) If:
  (a) the request to accept the varied proposal related to an action that is to be taken in a State or self-governing Territory; and
  (b) a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance); and
  (c) the Minister decided to accept the varied proposal;

the Minister must also, within the period referred to in subsection (1), give written notice of the decision to the appropriate Minister of the State or Territory.

(3) If the Minister decided to accept the varied proposal, the Minister must, within the period referred to in subsection (1), publish the request to accept the varied proposal and notice of the decision in accordance with the regulations.

Authorised Version C2016C00777 registered 12/07/2016

Division 1B—Change of person proposing to take action

156F Change of person proposing to take action

Notice of change of person proposing to take action

(1) At any time:

(a) after a proposal by a person to take an action has been referred to the Minister under Division 1 of Part 7; and

(b) before the Minister has approved, or refused to approve, the taking of the action under section 133;

the person (the ***first person***) proposing to take the action and another person (the ***second person***) may notify the Minister, in writing, that:

(c) the first person no longer proposes to take the action; and

(d) the second person proposes to take the action instead.

Note: A person who is the holder of an approval under Part 9 may transfer the approval to another person under section 145B.

When notice cannot be given

(2) Subsection (1) does not apply if:

(a) the Minister has made a decision under section 74A to not accept the referral of the proposal to take the action; or

(b) the Minister has made a decision under section 75 that the action is not a controlled action; or

(c) a particular manner for taking the action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action.

Requirements for notice

(3) A notice must:

(a) include the information (if any) prescribed by the regulations; and

Authorised Version C2016C00777 registered 12/07/2016

(b) be accompanied by the fee (if any) prescribed by the regulations.

Effect of notice

(4) If a notice is given to the Minister under subsection (1):

(a) any provisions of this Chapter that, apart from this paragraph, would have applied to the first person in relation to the action cease to apply to that person and start to apply to the second person; and

(b) for the purposes of the application of those provisions:

(i) the second person is taken to be named in the referral of the proposal to take the action as the person proposing to take the action; and

(ii) the second person is taken to have done anything the first person did in relation to the action; and

(iii) anything done in relation to the first person in relation to the action is taken to have been done in relation to the second person.

Publication of notice

(5) Within 10 business days after receiving a notice under subsection (1), the Minister must publish a copy of the notice in accordance with the regulations.

Authorised Version C2016C00777 registered 12/07/2016

Division 2—Actions in area offshore from a State or the Northern Territory

157 Actions treated as though they were in a State or the Northern Territory

(1) A provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a State also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the State by section 4 of the *Coastal Waters (State Title) Act 1980*.

(2) So far as a provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a self-governing Territory relates to the Northern Territory, the provision also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*.

Authorised Version C2016C00777 registered 12/07/2016

Division 3—Exemptions

158 Exemptions from Part 3 and this Chapter

(1) A person proposing to take a controlled action, or the designated proponent of an action, may apply in writing to the Minister for an exemption from a specified provision of Part 3 or of this Chapter.

(2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.

(3) The Minister may, by written notice, exempt a specified person from the application of a specified provision of Part 3 or of this Chapter in relation to a specified action.

(4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.

(5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency. This does not limit the matters the Minister may consider.

(6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.

(7) Within 10 business days after making the notice, the Minister must:

(a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations; and

(b) give a copy of the notice to the person specified in the notice.

Authorised Version C2016C00777 registered 12/07/2016

Division 3A—Approval process decisions not affected by listing events that happen after section 75 decision made

158A Approval process decisions not affected by listing events that happen after section 75 decision made

(1) In this section:

approval process decision means any of the following decisions:

(a) a decision under section 75 whether an action is a controlled action;

(b) a decision under section 75 whether a provision of Part 3 is a controlling provision for an action;

(c) a decision under section 78 in relation to a decision referred to in paragraph (a) or (b) of this definition;

(d) a decision under section 87 on the approach for the assessment of the impacts of an action;

(e) a decision under section 133 whether to approve an action;

(f) a decision under section 134 to attach conditions to an approval of an action;

(g) a decision under section 143 to revoke, vary or add to conditions attached to an approval of an action;

(h) any other decision made under a provision of this Chapter that is specified in the regulations.

listing event means any of the following events:

(a) a property becoming a declared World Heritage property;

(b) a change in the world heritage values of a declared World Heritage property;

(c) a place becoming a National Heritage place;

(d) a change in the National Heritage values included in the National Heritage List for a National Heritage place;

(e) a place becoming a Commonwealth Heritage place;

Authorised Version C2016C00777 registered 12/07/2016

Section 158A

(f) a change in the Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place;
(g) a wetland becoming a declared Ramsar wetland;
(h) a change in the boundaries of any of the following:
(i) a World Heritage property;
(ii) a National Heritage place;
(iii) a Commonwealth Heritage place;
(iv) a declared Ramsar wetland;
(v) the Great Barrier Reef Marine Park;
(i) a species becoming a listed threatened species;
(j) an ecological community becoming a listed threatened ecological community;
(k) a listed threatened species or a listed threatened ecological community becoming listed in another category representing a higher degree of endangerment;
(l) a species becoming a listed migratory species;
(m) any other event of a kind specified in the regulations.

(2) This section applies if:
(a) the Minister has, before or after the commencement of this section, decided under section 75 (the ***primary decision***) whether an action (the ***relevant action***) is a controlled action (whether the decision is that the action is a controlled action, or that the action is not a controlled action); and
(b) at a time that is after the commencement of this section and after the primary decision was made, a listing event occurs.

(3) The validity of the primary decision, or any other approval process decision made in relation to the relevant action before the listing event occurred, is not affected by the listing event, nor can it be revoked, varied, suspended, challenged, reviewed, set aside or called in question because of, or for reasons relating to, the listing event.

(4) After the listing event occurs, the listing event is to be disregarded:

Authorised Version C2016C00777 registered 12/07/2016

(a) in making any further approval process decision in relation to the relevant action; and

(b) in doing anything under this Chapter, in relation to the relevant action, because of the making of an approval process decision in relation to the relevant action (whether that approval process decision is or was made before or after the listing event occurred).

(5) This section has effect despite any other provision of this Act and despite any other law.

Authorised Version C2016C00777 registered 12/07/2016

Division 4—Application of Chapter to actions that are not controlled actions

Subdivision A—Minister's advice on authorising actions

159 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

A Commonwealth agency or employee must consider advice from the Minister before authorising one of the following actions with a significant impact on the environment:

(a) providing foreign aid;

(b) managing aircraft operations in airspace;

(c) adopting or implementing a major development plan for an airport;

(d) an action prescribed by the regulations.

The agency or employee must inform the Minister of the proposal to authorise the action.

The environmental impacts of the action must be assessed in accordance with a declaration made by the Minister accrediting a Commonwealth assessment process, or by one of the following methods chosen by the Minister:

(a) a specially accredited process;

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

(b) an assessment on preliminary documentation under Division 4 of Part 8;

Authorised Version C2016C00777 registered 12/07/2016

(c) a public environment report under Division 5 of Part 8;

(d) an environmental impact statement under Division 6 of Part 8;

(e) an inquiry under Division 7 of Part 8.

The Minister must give the agency or employee advice on protecting the environment from the action, within 30 days of receiving the report of the assessment.

160 Requirement to take account of Minister's advice

Requirement

(1) Before a Commonwealth agency or employee of the Commonwealth gives an authorisation (however described) of an action described in subsection (2), the agency or employee must obtain and consider advice from the Minister in accordance with this Subdivision.

Note: The giving of an authorisation for an action may be constituted by the renewal of an authorisation of the action or the variation of an authorisation for a different action.

Minister may decide advice is not required

(1A) Subsection (1) does not apply in relation to an authorisation of an action if:

(a) the agency or employee has referred a proposal to give the authorisation to the Minister under subsection 161(1); and

(b) the Minister has decided under subsection 161A(1) that this Subdivision does not apply in relation to the referral or the action.

Relevant actions

(2) Subsection (1) applies in relation to:

Authorised Version C2016C00777 registered 12/07/2016

(a) the entry by the Commonwealth, under Australia's foreign aid program, into a contract, agreement or arrangement for the implementation of a project that has, will have or is likely to have a significant impact on the environment anywhere in the world; and

(b) the adoption or implementation of a plan for aviation airspace management involving aircraft operations that have, will have or are likely to have a significant impact on the environment; and

(c) the adoption or implementation of a major development plan (as defined in the *Airports Act 1996*); and

(d) any other action prescribed by the regulations for the purposes of this paragraph.

(2A) Regulations may prescribe an action for the purposes of paragraph (2)(d):

(a) partly by reference to the action's having, or being likely to have, a significant impact on the environment; or

(b) partly by reference to a specified person believing that the action has, will have or is likely to have a significant impact on the environment; or

(c) wholly or partly by reference to legislation under which the authorisation of the action is to be granted.

This does not limit the ways in which regulations may prescribe an action.

This section does not apply to actions like those already assessed

(3) Subsection (1) does not apply in relation to a particular authorisation (the ***later authorisation***) if the agency or employee has complied with, or is complying with, this Subdivision in relation to another authorisation or proposed authorisation and is satisfied of one or both of the matters in subsection (4).

Which actions are like actions?

(4) For the purposes of subsection (3), the agency or employee must be satisfied that:

Authorised Version C2016C00777 registered 12/07/2016

(a) the Minister's advice relating to the other authorisation deals or will deal with all the impacts that the action to which the later authorisation relates has, will have or is likely to have on the environment; or

(b) the impacts that the action to which the later authorisation relates has, will have or is likely to have on the environment:

(i) are an extension of the corresponding impacts of the action to which the other authorisation relates; and

(ii) are not significantly different in nature from those corresponding impacts; and

(iii) do not significantly add to those corresponding impacts.

State law excluded in relation to aviation

(5) A law of a State or Territory does not apply in relation to the assessment of the certain or likely environmental impacts of an action described in paragraph (2)(b) if subsection (1) applies in relation to authorisation of the action, or would apply apart from subsection (3).

161 Seeking the Minister's advice

Requirement for referral

(1) If a Commonwealth agency or employee of the Commonwealth proposing to give an authorisation (however described) of an action thinks the agency or employee is required by section 160 (disregarding subsection 160(1A)) to obtain and consider the Minister's advice before giving the authorisation, the agency or employee must:

(a) refer the proposal to the Minister; and

(b) nominate a person to act as designated proponent of the action.

Minister may request referral

(2) The Minister may request a Commonwealth agency or employee of the Commonwealth to:

Authorised Version C2016C00777 registered 12/07/2016

(a) refer to the Minister a proposal to give an authorisation (however described) of an action; and

(b) nominate a person to act as designated proponent of the action;

if the Minister thinks the agency or employee is required by section 160 (disregarding subsection 160(1A)) to obtain and consider the Minister's advice before giving the authorisation.

Complying with Minister's request

(3) The Commonwealth agency or employee must comply with the Minister's request.

Content of referral

(4) A referral must include the information prescribed by the regulations.

161A Minister may decide that advice is not required

(1) If:

(a) the Minister receives a referral under subsection 161(1) of a proposal by a Commonwealth agency or employee of the Commonwealth to give an authorisation of an action; and

(b) the Minister is satisfied, on the basis of the information in the referral, that the action does not have, will not have or is not likely to have a significant impact on the environment;

the Minister may decide, in writing, that this Subdivision does not apply in relation to the referral or the action.

(2) If the Minister decides that this Subdivision does not apply in relation to the referral or the action, this Act (other than Divisions 2 and 3 of Part 7) applies as if the Minister had decided under Division 2 of Part 7 that the action is not a controlled action.

(3) If the Minister decides that this Subdivision does not apply in relation to the referral or the action, the Minister must:

Authorised Version C2016C00777 registered 12/07/2016

(a) give written notice of the decision to the agency or employee who referred the proposal to give an authorisation of the action; and

(b) publish notice of the decision in accordance with the regulations.

161B Certain provisions of other Acts not to apply if Minister decides that advice is not required

(1) This section applies in relation to a provision of another Act that is expressed to apply if:

(a) the advice of the Minister is sought under this Subdivision in relation to a proposal to give an authorisation (however described) of an action; or

(b) a proposal to give an authorisation (however described) of an action is referred to the Minister under this Subdivision.

(2) The provision does not apply in relation to an action if:

(a) a proposal to give an authorisation (however described) of the action has been referred to the Minister under section 161; and

(b) the Minister has decided under section 161A that this Subdivision does not apply in relation to the referral or the action.

Note: See, for example, subsections 94(6A) and 95(3A) of the *Airports Act 1996* and subsections 16(5) and 29(5) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

162 Assessment of the action

Part 8 (except sections 82, 83 and 84) and the other provisions of this Act (so far as they relate to that Part) apply in relation to the action proposed to be authorised as if:

(a) the referral of the proposal to give the authorisation were a referral of a proposal to take the action; and

Authorised Version C2016C00777 registered 12/07/2016

(b) the Minister had decided under Division 2 of Part 7 that the action was a controlled action when the proposal to give the authorisation was referred to the Minister; and

(c) the person nominated to act as the designated proponent had been designated as the proponent of the action by the Minister under section 75; and

(d) a reference in Part 8 or those provisions to the relevant impacts of the action were a reference to the impact that the action has, will have or is likely to have on the environment; and

(e) a reference in Part 8 or those provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to giving informed advice about the proposal to give an authorisation of the action.

163 Providing advice

(1) The Minister must give advice on the following matters to the Commonwealth agency or employee of the Commonwealth who referred the proposal to give an authorisation of the action:

(a) whether the agency or employee should give the authorisation;

(b) what conditions (if any) should be attached to the authorisation (if possible) to protect the environment;

(c) any other matter relating to protection of the environment from the action.

(2) The Minister must give the advice within 30 business days of receiving:

(a) a report mentioned in subsection 84(3) relating to the action; or

(aa) a finalised recommendation report under Division 3A of Part 8 (as applied by section 162) relating to the action; or

(ab) the documents given to the Minister under subsection 95B(1) (as applied by section 162), or the statement given to the

Authorised Version C2016C00777 registered 12/07/2016

Minister under subsection 95B(3) (as applied by section 162), as the case requires, relating to the action; or

(ac) a finalised public environment report under Division 5 of Part 8 (as applied by section 162) relating to the action; or

(ad) a finalised environmental impact statement under Division 6 of Part 8 (as applied by section 162) relating to the action; or

(b) a report of an inquiry under Division 7 of Part 8 (as applied by section 162) relating to the action.

164 Reporting on response to advice

As soon as practicable after considering the Minister's advice, the Commonwealth agency or employee of the Commonwealth must give the Minister a report stating:

(a) what action has been taken in relation to the Minister's advice; and

(b) if the agency or employee did not give effect to some or all of the Minister's advice—why the agency or employee did not do so.

Subdivision C—Assessment under agreement with State or Territory

166 This Subdivision applies if Ministers agree it should

(1) This Subdivision applies if the Minister and a Minister of a State or self-governing Territory agree that it should apply in relation to an action that:

(a) is to be taken in the State or Territory by a constitutional corporation; or

(b) if the agreement is with a Minister of a Territory—is to be taken in the Territory; or

(c) is to be taken in the State or Territory by a person for the purposes of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

Authorised Version C2016C00777 registered 12/07/2016

(iii) between a State and a Territory; or

(iv) between 2 Territories; or

(d) is to be taken in the State or Territory and is an action whose assessment under this Subdivision is an appropriate means of giving effect to Australia's obligations under an agreement with one or more other countries.

(2) This section applies to the adoption or implementation of a policy, plan or program in the same way as it applies to any other action.

(3) Despite subsection (1), this Subdivision does not apply in relation to an action to be taken in 2 or more States or self-governing Territories unless there is an agreement between the Minister and a Minister of each of those States and Territories that this Subdivision should apply in relation to the action.

167 Making an agreement

Power to make agreement

(1) The Minister may make a written agreement with a Minister of a State or self-governing Territory to apply this Subdivision in relation to an action to be taken in the State or Territory.

Prerequisites for making agreement

(2) The Minister may agree only if he or she is satisfied that the action is not a controlled action.

Minister must not make an agreement that gives preference

(3) The Minister must not enter into an agreement that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:

(a) by a constitutional corporation; or

(b) by a person for the purposes of trade or commerce between Australia and another country or between 2 States.

Authorised Version C2016C00777 registered 12/07/2016

168 Content of an agreement

Generally

(1) An agreement to apply this Subdivision in relation to an action must:

(a) specify that one of the following is to apply in relation to the action:

(i) Division 3A of Part 8;

(ii) Division 4 of Part 8;

(iii) Division 5 of Part 8;

(iv) Division 6 of Part 8;

(v) Division 7 of Part 8;

(vi) Subdivision A of Division 1 of Part 10; and

(b) if it specifies that Division 3A, 4, 5 or 6 of Part 8 is to apply in relation to the action—specify the person who is taken to be the designated proponent of the action for the purposes of that Division.

Agreement applying Division 5 of Part 8

(3) An agreement that specifies that Division 5 of Part 8 (about public environment reports) is to apply in relation to an action may deal with how the Minister will exercise his or her power:

(a) under section 97 to prepare tailored guidelines for the preparation of a draft report; or

(b) under section 98 to approve publication of a draft report or specify a period for comment.

Agreement applying Division 6 of Part 8

(4) An agreement that specifies that Division 6 of Part 8 (about environmental impact statements) is to apply in relation to an action may deal with how the Minister will exercise his or her power:

(a) under section 102 to prepare tailored guidelines for the preparation of a draft statement; or

Authorised Version C2016C00777 registered 12/07/2016

(b) under section 103 to approve publication of a draft statement or specify a period for comment.

Agreement applying Division 7 of Part 8

(5) An agreement that specifies that Division 7 of Part 8 (about inquiries) is to apply in relation to an action may deal with how the Minister will exercise his or her power under section 107:

(a) to appoint one or more persons as commissioners, and to appoint a person to preside; or

(b) to specify the matters relating to the action that are to be the subject of the inquiry and report; or

(c) to specify the time within which the commission must report to the Minister; or

(d) to specify the manner in which the commission is to carry out the inquiry.

Agreement applying Part 10

(6) An agreement that specifies that Subdivision A of Division 1 of Part 10 is to apply may:

(a) be in the same document as an agreement mentioned in that Subdivision; or

(b) specify the manner in which an agreement the Minister makes under that Subdivision is to provide for matters that that Subdivision requires that agreement to provide for.

169 Application of a Division of Part 8

Provisions that apply

(1) If the agreement states that a particular Division of Part 8 is to apply in relation to the assessment of an action, the following provisions of this Act (the ***applied provisions***) apply in relation to the action as set out in subsection (2):

(a) that Division;

(b) the other provisions of this Act (except Part 9), so far as they relate to that Division.

Authorised Version C2016C00777 registered 12/07/2016

Modification of applied provisions

(2) The applied provisions apply in relation to the action as if:
  (a) the Minister had decided under Division 2 of Part 7 that the action was a controlled action; and
  (b) the Minister had decided that the relevant impacts of the action must be assessed under the Division specified in the agreement applying the Division; and
  (c) the person specified in the agreement as the person who is taken to be the designated proponent of the action for the purposes of that Division had been designated as the proponent of the action by the Minister under section 75; and
  (d) a reference in the applied provisions to the relevant impacts of the action were a reference to the impact that the action has, will have or is likely to have on the environment; and
  (e) a reference in the applied provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to making an informed report and recommendations relating to the action.

Modification of Division 4 of Part 8

(3) Also, if the agreement states that Division 4 of Part 8 is to apply in relation to the action, that Division applies in relation to the action as if paragraphs 95(2)(a) and (b) and 95A(3)(a), (b) and (c) merely referred to specified information relating to the action.

Minister must give copy of report to State or Territory Minister

(4) The Minister must give a copy of the report he or she receives from the Secretary or commission of inquiry under the applied provisions in relation to the action to each Minister of a State or Territory who is party to the agreement.

Authorised Version C2016C00777 registered 12/07/2016

170 Application of Subdivision A of Division 1 of Part 10

If an agreement to apply this Subdivision states that Subdivision A of Division 1 of Part 10 is to apply:

(a) that Subdivision applies as if:

(i) the reference in subsection 146(1) to relevant impacts of actions were a reference to the impacts the actions have, will have or are likely to have on the environment; and

(ii) paragraph 146(2)(f) were omitted; and

(b) the Minister must give a copy of the report provided to the Minister under the agreement made under section 146, and of any recommendations made by the Minister under the agreement, to each Minister of a State or Territory who is party to the agreement to apply this Subdivision.

Authorised Version C2016C00777 registered 12/07/2016

Division 5—Publication of information relating to assessments

170A Publication of information relating to assessments

The Secretary must publish on the internet every week notice of the following:

(a) the publication in the immediately preceding week by the Minister under section 45 of a notice of the Minister's intention to develop a draft bilateral agreement;

(b) each referral (if any) of an action received by the Minister under Division 1 of Part 7 in the immediately preceding week;

(c) each decision (if any) in the immediately preceding week under Division 2 of Part 7 that an action is a controlled action;

(d) each decision (if any) in the immediately preceding week under Division 3 of Part 8 about which approach is to be used for assessment of the relevant impacts of an action;

(da) each draft recommendation report and invitation (if any) published in the immediately preceding week under Division 3A of Part 8 (about assessment on referral information);

(e) the information and invitations (if any) published in the immediately preceding week under Division 4 of Part 8 (about assessment on preliminary documentation);

(f) each set of guidelines (if any) prepared in the immediately preceding week by the Minister under Division 5 or 6 of Part 8 for a report or statement;

(g) each public invitation (if any) issued in the immediately preceding week by the Minister to comment on a draft of guidelines under Division 5 or 6 of Part 8 for a report or statement;

Authorised Version C2016C00777 registered 12/07/2016

(h) each draft or finalised report or statement published in the immediately preceding week under Division 5 or 6 of Part 8 by a designated proponent;

(i) each finalised recommendation report given to the Minister under Division 3A of Part 8 in the immediately preceding week;

(ia) each recommendation report given to the Minister in the immediately preceding week under section 95C, 100 or 105;

(j) any other matter prescribed by the regulations.

170B Information critical to protecting matters of national environmental significance not to be disclosed

(1) The Minister may, by notice in writing to a person, direct the person not to disclose specified information when publishing a document or material as required or permitted by a specified provision of this Chapter, if the Minister considers that the information is critical to the protection of a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance).

(2) A provision of this Chapter that is specified in a direction under subsection (1) has effect as if it did not require or permit the publication of the information specified in the direction.

(3) A person who is given a direction under subsection (1) must not contravene the direction.

Civil penalty: 100 penalty units.

170BA Designated proponent may request Minister to permit commercial-in-confidence information not to be disclosed

(1) This section applies in relation to the assessment documentation that must be published by the designated proponent of an action to which Division 4, 5 or 6 of Part 8 applies.

(2) The designated proponent may request the Minister, in writing, to permit the designated proponent not to publish so much of the

Authorised Version C2016C00777 registered 12/07/2016

assessment documentation relating to the action as the designated proponent considers is commercial-in-confidence.

(3) A request under subsection (2) must include the information prescribed by the regulations.

(4) If the Minister is satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence, the Minister may, by written notice to the designated proponent, permit the designated proponent not to publish that part of the assessment documentation.

(5) The Minister must not be satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence unless a person demonstrates to the Minister that:

(a) release of the information in that part would cause competitive detriment to the person; and

(b) the information in that part is not in the public domain; and

(c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

(d) the information in that part is not readily discoverable.

(6) If the Minister permits the designated proponent not to publish a part of the assessment documentation that the Minister considers is commercial-in-confidence, the provision of Division 4, 5 or 6 of Part 8 that requires the designated proponent to publish the assessment documentation has effect as if it did not require the publication of that part of the assessment documentation.

(7) In this section:

assessment documentation, in relation to an action to which Division 4, 5 or 6 of Part 8 applies, means:

(a) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:

(i) the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires; and

Authorised Version C2016C00777 registered 12/07/2016

(ii) the document prepared under paragraph 95B(1)(a) or the information referred to in subsection 95B(4), as the case requires; or

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

(i) the draft public environment report relating to the action given to the Minister under paragraph 98(1)(ab); and

(ii) the finalised public environment report relating to the action given to the Minister under section 99; or

(c) if Division 6 of Part 8 (environmental impact statements) applies to the action:

(i) the draft environmental impact statement relating to the action given to the Minister under paragraph 103(1)(ab); and

(ii) the finalised environmental impact statement relating to the action given to the Minister under section 104.

Authorised Version C2016C00777 registered 12/07/2016

Division 6—Withdrawal of referrals

170C Withdrawal of referral of proposal to take an action

(1) Subject to subsection (2), a person who:

(a) has referred a proposal to take an action to the Minister under section 68; or

(b) is named as the person proposing to take an action in a proposal that is referred to the Minister under section 69 or 71;

may withdraw the referral, by written notice to the Minister.

(2) The referral cannot be withdrawn after the Minister has decided, under Part 9, whether or not to approve the taking of the action.

(3) If the Minister receives a notice withdrawing the referral, the Minister must publish notice of the withdrawal of the referral in accordance with the regulations.

(4) If the referral is withdrawn, the provisions of this Chapter that would, apart from this subsection, have applied to the action cease to apply to the action.

Authorised Version C2016C00777 registered 12/07/2016

Division 7—Miscellaneous

170CA Fees

(1) The Minister may, in writing, determine the amounts of fees that may be charged if the approach for assessing the relevant impacts of an action that the Minister has decided is a controlled action is:

(a) assessment by inquiry under Division 7 of Part 8; or

(b) assessment by strategic assessment under Division 1 of Part 10.

(2) Before making a determination, the Minister must consult:

(a) the person proposing to take the action; or

(b) if the person proposing to take the action is not the designated proponent—the designated proponent; or

(c) if the approach is assessment by strategic assessment—the person responsible for the adoption or implementation of the relevant policy, plan or program;

about the amounts of fees to be charged.

(3) The Minister may, in the determination made under subsection (1), determine the way in which a fee is to be worked out.

(4) A determination made under subsection (1) is not a legislative instrument.

Authorised Version C2016C00777 registered 12/07/2016

Chapter 5—Conservation of biodiversity and heritage

Part 11A—Interpretation

170D References to business days are references to Canberra business days

A reference in this Chapter to a business day is a reference to a day that is a business day in Canberra.

Authorised Version C2016C00777 registered 12/07/2016

Part 12—Identifying and monitoring biodiversity and making bioregional plans

Division 1—Identifying and monitoring biodiversity

171 Identifying and monitoring biodiversity

(1) The Minister may, on behalf of the Commonwealth, co-operate with, and give financial or other assistance to, any person for the purpose of identifying and monitoring components of biodiversity.

(2) Without limiting subsection (1), the co-operation and assistance may include co-operation and assistance in relation to all or any of the following:

(a) identifying and monitoring components of biodiversity that are important for its conservation and ecologically sustainable use;

(b) identifying components of biodiversity that are inadequately understood;

(c) collecting and analysing information about the conservation status of components of biodiversity;

(d) collecting and analysing information about processes or activities that are likely to have a significant impact on the conservation and ecologically sustainable use of biodiversity;

(e) assessing strategies and techniques for the conservation and ecologically sustainable use of biodiversity;

(f) systematically determining biodiversity conservation needs and priorities.

(3) In this Act:

components of biodiversity includes species, habitats, ecological communities, genes, ecosystems and ecological processes.

(4) For the purposes of this section, the components of biological diversity that are important for its conservation and ecologically

Authorised Version C2016C00777 registered 12/07/2016

sustainable use are to be identified having regard to the matters set out in Annex I to the Biodiversity Convention.

(5) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

172 Inventories of listed threatened species etc. on Commonwealth land

(1) The Minister may prepare an inventory covering an area of Commonwealth land that identifies, and states the abundance of, the listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species on the area of land if:

(a) the Minister is satisfied that the area of land is of importance for the conservation of biodiversity; and

(b) the area of land is not covered by a plan that:

(i) has an object (whether express or implied) of either protecting the environment or promoting the conservation of biodiversity; and

(ii) is in force under a law of the Commonwealth.

(2) A Commonwealth agency must provide all reasonable assistance in connection with the preparation of an inventory if:

(a) the inventory is to cover an area of Commonwealth land; and

(b) the agency has an interest in the area of land.

(3) For the purposes of paragraph (2)(b), a Commonwealth agency has an interest in an area of Commonwealth land if the agency:

(a) has a legal or equitable interest in the area; or

(b) occupies the area; or

(c) has administrative responsibilities relating to the area or to actions taken in the area.

Authorised Version C2016C00777 registered 12/07/2016

173 Surveys of cetaceans, listed threatened species etc. in Commonwealth marine areas

(1) The Minister may prepare a survey covering a Commonwealth marine area that identifies, and states the extent of the range of, cetaceans, listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species in the area if:

(a) the Minister is satisfied that the area is of importance for the conservation of biodiversity; and

(b) the area is not covered by a plan that:

(i) has an object (whether express or implied) of either protecting the environment or promoting the conservation of biodiversity; and

(ii) is in force under a law of the Commonwealth.

(2) A Commonwealth agency must provide all reasonable assistance in connection with the preparation of a survey if:

(a) the survey is to cover a Commonwealth marine area; and

(b) the agency has an interest in the area.

(3) For the purposes of paragraph (2)(b), a Commonwealth agency has an interest in a Commonwealth marine area if the agency:

(a) has a legal or equitable interest in the area; or

(b) occupies the area; or

(c) has administrative responsibilities relating to the area or to actions taken in the area.

174 Inventories and surveys to be updated

The Minister must take reasonable steps to ensure that the inventories and surveys prepared under this Division are maintained in an up-to-date form.

Authorised Version C2016C00777 registered 12/07/2016

Division 2—Bioregional plans

176 Bioregional plans

(1) The Minister may prepare a bioregional plan for a bioregion that is within a Commonwealth area. In preparing the plan, the Minister must carry out public consultation on a draft of the plan in accordance with the regulations.

(2) The Minister may, on behalf of the Commonwealth, co-operate with a State or a self-governing Territory, an agency of a State or of a self-governing Territory, or any other person in the preparation of a bioregional plan for a bioregion that is not wholly within a Commonwealth area.

(3) The co-operation may include giving financial or other assistance.

(4) A bioregional plan may include provisions about all or any of the following:

(a) the components of biodiversity, their distribution and conservation status;

(b) important economic and social values;

(ba) heritage values of places;

(c) objectives relating to biodiversity and other values;

(d) priorities, strategies and actions to achieve the objectives;

(e) mechanisms for community involvement in implementing the plan;

(f) measures for monitoring and reviewing the plan.

(4A) A bioregional plan prepared under subsection (1) or (2) is not a legislative instrument.

(5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.

Authorised Version C2016C00777 registered 12/07/2016

177 Obligations under this Act unaffected by lack of bioregional plans

Obligations imposed by this Act are not affected, in their application in relation to Commonwealth areas, by a lack of bioregional plans for those areas.

Authorised Version C2016C00777 registered 12/07/2016

Part 13—Species and communities

Division 1—Listed threatened species and ecological communities

Subdivision A—Listing

178 Listing of threatened species

(1) The Minister must, by legislative instrument, establish a list of threatened species divided into the following categories:
  (a) extinct;
  (b) extinct in the wild;
  (c) critically endangered;
  (d) endangered;
  (e) vulnerable;
  (f) conservation dependent.

(2) The list, as first established, must contain only the species contained in Schedule 1 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.

(3) The Minister must include:
  (a) in the extinct category of the list, as first established, only the species mentioned in subsection (2) that were listed as presumed extinct; and
  (b) in the endangered category of the list, as first established, only the native species mentioned in subsection (2) that were listed as endangered; and
  (c) in the vulnerable category of the list, as first established, only the species mentioned in subsection (2) that were listed as vulnerable.

Authorised Version C2016C00777 registered 12/07/2016

(4) If the Minister is satisfied that a species included in the list, as first established, in:

(a) the extinct category; or

(b) the endangered category; or

(c) the vulnerable category;

is not eligible to be included in that or any other category, or is eligible to be, or under subsection 186(3), (4) or (5) can be, included in another category, the Minister must, within 6 months after the commencement of this Act, amend the list accordingly in accordance with this Subdivision.

179 Categories of threatened species

(1) A native species is eligible to be included in the ***extinct*** category at a particular time if, at that time, there is no reasonable doubt that the last member of the species has died.

(2) A native species is eligible to be included in the ***extinct in the wild*** category at a particular time if, at that time:

(a) it is known only to survive in cultivation, in captivity or as a naturalised population well outside its past range; or

(b) it has not been recorded in its known and/or expected habitat, at appropriate seasons, anywhere in its past range, despite exhaustive surveys over a time frame appropriate to its life cycle and form.

(3) A native species is eligible to be included in the ***critically endangered*** category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.

(4) A native species is eligible to be included in the ***endangered*** category at a particular time if, at that time:

(a) it is not critically endangered; and

(b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.

Authorised Version C2016C00777 registered 12/07/2016

(5) A native species is eligible to be included in the ***vulnerable*** category at a particular time if, at that time:

(a) it is not critically endangered or endangered; and

(b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.

(6) A native species is eligible to be included in the ***conservation dependent*** category at a particular time if, at that time:

(a) the species is the focus of a specific conservation program the cessation of which would result in the species becoming vulnerable, endangered or critically endangered; or

(b) the following subparagraphs are satisfied:

(i) the species is a species of fish;

(ii) the species is the focus of a plan of management that provides for management actions necessary to stop the decline of, and support the recovery of, the species so that its chances of long term survival in nature are maximised;

(iii) the plan of management is in force under a law of the Commonwealth or of a State or Territory;

(iv) cessation of the plan of management would adversely affect the conservation status of the species.

(7) In subsection (6):

fish includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

180 Native species of marine fish

(1) A native species of marine fish is eligible to be included in a category mentioned in a paragraph of subsection 178(1) at a particular time if, at that time, the species meets the prescribed criteria for that category.

Authorised Version C2016C00777 registered 12/07/2016

(2) A subsection of section 179 referring to a category (the ***relevant category***) does not apply to a native species of marine fish if regulations are in force for the purposes of subsection (1) of this section prescribing criteria for the relevant category.

181 Listing of threatened ecological communities

(1) The Minister must, by legislative instrument, establish a list of threatened ecological communities divided into the following categories:
  (a) critically endangered;
  (b) endangered;
  (c) vulnerable.

(2) Subject to subsection (3), the Minister must not include an ecological community in a particular category of the list, as first established, unless satisfied that the ecological community is eligible to be included in that category when the list is first published.

(3) The list, as first established, must contain only the ecological communities listed in Schedule 2 to the *Endangered Species Protection Act 1992* immediately before the commencement of this Act, and they must be listed in the endangered category.

(4) If the Minister is satisfied that an ecological community included in the endangered category of the list, as first established under subsection (3), is not eligible to be included in that or any other category, or is eligible to be included in another category, the Minister must, within 6 months after the commencement of this Act, amend the list accordingly in accordance with this Subdivision.

(5) To avoid doubt, the instrument first establishing the list under subsection (1) is not taken to have been a legislative instrument.

Note: When the list was first established, it was required to be established by instrument published in the Gazette.

Authorised Version C2016C00777 registered 12/07/2016

182 Critically endangered, endangered and vulnerable communities

(1) An ecological community is eligible to be included in the ***critically endangered*** category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.

(2) An ecological community is eligible to be included in the ***endangered*** category at a particular time if, at that time:
  (a) it is not critically endangered; and
  (b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.

(3) An ecological community is eligible to be included in the ***vulnerable*** category at a particular time if, at that time:
  (a) it is not critically endangered nor endangered; and
  (b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.

183 Listing of key threatening processes

(1) The Minister must, by legislative instrument, establish a list of threatening processes that are key threatening processes.

(2) The list, as first established, must contain only the key threatening processes contained in Schedule 3 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.

184 Minister may amend lists

Subject to this Subdivision, the Minister may, by legislative instrument, amend a list referred to in section 178, 181 or 183 by:
  (a) including items in the list in accordance with Subdivision AA; or

Authorised Version C2016C00777 registered 12/07/2016

(aa) including items in the list in accordance with subsection 186(3), (4) or (5); or

(b) deleting items from the list; or

(c) in the case of the list referred to in section 178 or 181—transferring items from one category in the list to another category in the list in accordance with Subdivision AA; or

(d) correcting an inaccuracy or updating the name of a listed threatened species or listed threatened ecological community.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

186 Amending list of threatened native species

Including native species in a category

(1) Subject to subsections (3), (4) and (5), the Minister must not include (whether as a result of a transfer or otherwise) a native species in a particular category unless satisfied that the native species is eligible to be included in that category.

(2) In deciding whether to include a native species in a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:

(a) whether the native species is eligible to be included in that category; or

(b) the effect that including the native species in that category could have on the survival of the native species.

Deleting native species from a category

(2A) The Minister must not delete (whether as a result of a transfer or otherwise) a native species from a particular category unless satisfied that:

(a) the native species is no longer eligible to be included in that category; or

Authorised Version C2016C00777 registered 12/07/2016

(b) the inclusion of the native species in that category is not contributing, or will not contribute, to the survival of the native species.

(2B) In deciding whether to delete a native species from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:

(a) whether the native species is eligible to be included in that category; or

(b) the effect that the inclusion of the native species in that category is having, or could have, on the survival of the native species.

Including similar species to an eligible species

(3) The Minister may include a native species in the critically endangered category if satisfied that:

(a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(3)) that it is difficult to differentiate between the 2 species; and

(b) this difficulty poses an additional threat to the last-mentioned species; and

(c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as critically endangered.

(4) The Minister may include a native species in the endangered category if satisfied that:

(a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(4)) that it is difficult to differentiate between the 2 species; and

(b) this difficulty poses an additional threat to the last-mentioned species; and

(c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as endangered.

Authorised Version C2016C00777 registered 12/07/2016

(5) The Minister may include a native species in the vulnerable category if satisfied that:
   (a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(5)) that it is difficult to differentiate between the 2 species; and
   (b) this difficulty poses an additional threat to the last-mentioned species; and
   (c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as vulnerable.

187 Amending list of ecological communities

Including ecological communities in a category

(1) The Minister must not include (whether as a result of a transfer or otherwise) an ecological community in a particular category unless satisfied that the ecological community is eligible to be included in that category.

(2) In deciding whether to include an ecological community in a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:
   (a) whether the ecological community is eligible to be included in that category; or
   (b) the effect that including the ecological community in that category could have on the survival of the ecological community.

Deleting ecological communities from a category

(3) The Minister must not delete (whether as a result of a transfer or otherwise) an ecological community from a particular category unless satisfied that:
   (a) the ecological community is no longer eligible to be included in that category; or

Authorised Version C2016C00777 registered 12/07/2016

(b) the inclusion of the ecological community in that category is not contributing, or will not contribute, to the survival of the ecological community.

(4) In deciding whether to delete an ecological community from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:
   (a) whether the ecological community is eligible to be included in that category; or
   (b) the effect that the inclusion of the ecological community in that category is having, or could have, on the survival of the ecological community.

188 Amending list of key threatening processes

(1) The Minister must not add a threatening process to the list unless satisfied that it is eligible to be treated as a key threatening process.

(2) The Minister must not delete a threatening process from the list unless satisfied that it is no longer eligible to be treated as a key threatening process.

(3) A process is a ***threatening process*** if it threatens, or may threaten, the survival, abundance or evolutionary development of a native species or ecological community.

(4) A threatening process is eligible to be treated as a key threatening process if:
   (a) it could cause a native species or an ecological community to become eligible for listing in any category, other than conservation dependent; or
   (b) it could cause a listed threatened species or a listed threatened ecological community to become eligible to be listed in another category representing a higher degree of endangerment; or
   (c) it adversely affects 2 or more listed threatened species (other than conservation dependent species) or 2 or more listed threatened ecological communities.

Authorised Version C2016C00777 registered 12/07/2016

189 Minister must consider advice from Scientific Committee

(1) In deciding whether to make an amendment covered by paragraph 184(1)(aa), (b) or (d), the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the proposed amendment.

(1A) Subsection (1) has effect subject to section 192.

(1B) If advice from the Scientific Committee for the purposes of subsection (1) is to the effect that a particular native species, or a particular ecological community, is eligible to be included in the relevant list in a particular category, the advice must also contain:

(a) a statement that sets out:

(i) the grounds on which the species or community is eligible to be included in the category; and

(ii) the main factors that are the cause of it being so eligible; and

(b) either:

(i) information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or

(ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community; and

(c) a recommendation on the question whether there should be a recovery plan for the species or community.

(2) In preparing advice under subsection (1), the Scientific Committee may obtain advice from a person with expertise relevant to the subject matter of the proposed amendment.

(3) In preparing advice for a proposed amendment to delete an item:

(a) included in a category of a list referred to in section 178 or 181; and

(b) that had not been included in that category in accordance with subsection 186(3), (4) or (5);

Authorised Version C2016C00777 registered 12/07/2016

the only matters the Scientific Committee may consider are matters relating to:

(c) the survival of the native species or ecological community concerned; or

(d) the effect that the inclusion in the list of the native species or ecological community concerned is having, or could have, on the survival of that native species or ecological community.

(3A) In preparing advice for a proposed amendment to:

(a) include a native species in a category of the list referred to in section 178 in accordance with subsection 186(3), (4) or (5) because of the species' resemblance to another species; or

(b) delete a native species from a category of the list referred to in section 178 that had been included in that category in accordance with subsection 186(3), (4) or (5) because of the species' resemblance to another species;

the only matters the Scientific Committee may consider are matters relating to:

(c) the survival of either species; or

(d) the effect that the inclusion in the list of the first-mentioned species is having, or could have, on the survival of either species.

189A Certain information may be kept confidential

(1) This section applies if the Minister considers that the survival of a native species or ecological community could be threatened by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:

(a) the precise location of the species in the wild, or of the community;

(b) any other information about the species or community.

(2) It is sufficient compliance with this Act if only a general description of the location of the species or community is included

Authorised Version C2016C00777 registered 12/07/2016

in an instrument or other document created for the purposes of this Act.

189B Disclosure of Scientific Committee's assessments and advice

(1) A member of the Scientific Committee has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Committee or another member of the Committee:

(a) an assessment under section 194N in relation to whether an item is eligible for inclusion (whether as a result of a transfer or otherwise) in a list referred to in section 178, 181 or 183, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;

(b) advice under section 189 concerning an amendment covered by subsection 189(1) or any information relating to the advice.

(2) However:

(a) the duty not to disclose a thing described in paragraph (1)(a) in relation to an item does not exist after:

(i) registration under Division 3 of Part 4 of the *Legislative Instruments Act 2003* of an instrument made under section 189 in relation to the item; or

(ii) the Minister decides under paragraph 194Q(1)(b) not to include the item in a list referred to in section 178, 181 or 183; and

(b) the duty not to disclose a thing described in paragraph (1)(b) in relation to an amendment does not exist after:

(i) registration under Division 3 of Part 4 of the *Legislative Instruments Act 2003* of an instrument made under section 189 relating to the amendment; or

(ii) the Minister decides under this Subdivision not to remove the item from a list referred to in section 178, 181 or 183.

Authorised Version C2016C00777 registered 12/07/2016

(3) Subsection (1) does not apply to a disclosure of particular information if:

(a) the Chair of the Scientific Committee requests the Minister to give permission to disclose that information to a particular person (or persons within a particular group of persons); and

(b) the Minister gives that permission; and

(c) the disclosure is made to that person (or a person within that group).

(4) After a member of the Scientific Committee has ceased under subsection (2) to have a duty not to disclose:

(a) an assessment under section 194N in relation to whether an item is eligible for inclusion (whether as a result of a transfer or otherwise) in a list referred to in section 178, 181 or 183; or

(b) advice under section 189 concerning an amendment covered by subsection 189(1);

the member must give a copy of the assessment or advice to anyone who asks for it.

(5) If:

(a) a member of the Scientific Committee proposes to give a person under subsection (4):

(i) a copy of an assessment relating to an item concerning a native species or ecological community; or

(ii) a copy of advice relating to an amendment concerning a native species or ecological community; and

(b) the member is aware that, under section 189A, it would be sufficient compliance with this Act if the copy included only a general location of the species or community;

the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

Authorised Version C2016C00777 registered 12/07/2016

190 Scientific Committee may provide advice about species or communities becoming threatened

(1) If the Scientific Committee is of the opinion that a native species or ecological community is not eligible to be included in any category of the list mentioned in section 178 or 181, the Committee may give advice to the Minister concerning any action that is necessary to prevent the species or community becoming threatened.

(2) The Minister is to have regard to any advice given under subsection (1) in performing any function, or exercising any power, under this Act relevant to the species or community.

192 Rediscovery of threatened species that were extinct

(1) If the Minister is satisfied that a native species that is listed in the extinct category has been definitely located in nature since it was last listed as extinct, the Minister may, under section 184, transfer the species from the extinct category to another category without considering advice from the Scientific Committee.

(2) Subsection (1) does not prevent the Minister from making such an amendment after having considered advice from the Scientific Committee.

193 Species posing a serious threat to human health

(1) If the Minister is satisfied that a native species poses a serious threat to human health, the Minister may, by legislative instrument, determine that the species is not appropriate for inclusion in any of the categories of the list referred to in section 178.

(2) While the determination is in force, the species is not to be added to that list.

(4) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).

Authorised Version C2016C00777 registered 12/07/2016

194 Lists must be publicly available

The Minister must ensure that:

(a) up-to-date copies of the lists referred to in sections 178, 181 and 183 are available for free to the public on request; and

(b) up-to-date copies of the lists are available on the internet.

Note: The copies of the lists made publicly available may not contain certain information kept confidential under section 189A.

Subdivision AA—The nomination and listing process

194A Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for including an item in a list referred to in section 178, 181 or 183, or transferring an item from one category in one of those lists to another category in the list.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 194C).

The usual process involves the following steps for each assessment period for a list:

(a) the Minister may determine conservation themes (this step is optional) (see section 194D);

(b) the Minister invites people to nominate items for inclusion in the list referred to in section 178, 181 or 183, and gives the nominations to the Scientific Committee (see sections 194E and 194F);

(c) the Scientific Committee prepares, and gives to the Minister, a list of items (which will mostly be

Authorised Version C2016C00777 registered 12/07/2016

items that have been nominated) that it thinks should be assessed (see sections 194G to 194J);

(d) the Minister finalises the list of items that are to be assessed (see sections 194K and 194L);

(e) the Scientific Committee invites people to make comments about the item in the finalised list (see section 194M);

(f) the Scientific Committee assesses the item in the finalised list, and gives the assessments to the Minister (see sections 194N and 194P);

(g) the Minister decides whether an item that has been assessed should be included in the list referred to in section 178, 181 or 183 (see section 194Q).

The steps mentioned in paragraphs (a) to (d) will generally be completed before the start of the assessment period.

194B Definitions

(1) In this Subdivision:

assessment period has the meaning given by subsection 194C(1).

eligible for assessment consideration, in relation to an assessment period, has the meaning given by subsection 194G(3).

finalised priority assessment list for an assessment period has the meaning given by subsection 194K(4).

includes has a meaning affected by subsection (2).

proposed priority assessment list for an assessment period has the meaning given by subsection 194G(1).

Subdivision A List means a list referred to in section 178, 181 or 183.

Authorised Version C2016C00777 registered 12/07/2016

(2) A reference in this Subdivision to including an item in a list referred to in section 178 or 181 includes a reference to transferring the item from one category in the list to another category in the list.

194C Meaning of *assessment period*

(1) For the purposes of this Subdivision, each of the following is an ***assessment period*** for a Subdivision A List:

(a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph in relation to the Subdivision A List;

(b) each period of 12 months starting on an anniversary of the day so determined.

(2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.

(3) A determination under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the determination. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

194D Minister may determine conservation themes for an assessment period

(1) Before the Minister invites nominations for an assessment period for a Subdivision A List under section 194E, the Minister may determine one or more conservation themes that the Minister considers should be given priority in relation to the assessment period for the Subdivision A List.

(2) Without limiting subsection (1), the Minister may determine as a conservation theme that priority should be given to the conservation of:

Authorised Version C2016C00777 registered 12/07/2016

(a) particular groups of species; or
(b) particular species; or
(c) particular regions of Australia.

(3) The Minister may request advice from the Scientific Committee for the purpose of making a determination under subsection (1), and may have regard to any advice the Committee provides in response to the request.

(4) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

194E Minister to invite nominations for each assessment period

(1) Before the start of each assessment period for a Subdivision A List, the Minister must publish a notice inviting people to nominate items for inclusion in the Subdivision A List.

Note: Nominations can be for the transfer of an item already on a list covered by section 178 or 181 from one category in the list to another category in the list (see subsection 194B(2)).

(2) A notice under subsection (1):
(a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
(b) must invite people to nominate, to the Minister, items for inclusion in the Subdivision A List; and
(c) must identify the assessment period to which the notice relates; and
(d) must specify a date (the ***cut-off date***) by which nominations must be received, which must be at least 40 business days after the notice has been published as required by paragraph (a); and
(e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and
(f) may also include:

Authorised Version C2016C00777 registered 12/07/2016

(i) information related to any conservation themes that the Minister has determined under section 194D should be given priority in relation to the assessment period for the Subdivision A List; and

(ii) any other information that the Minister considers appropriate.

(3) The regulations must provide for the following:

(a) how a notice under subsection (1) is to be published;

(b) the manner and form for making nominations;

(c) what information is to be included in a nomination.

194F Minister to give nominations to Scientific Committee

Nominations in relation to first assessment period

(1) Within 30 business days after the cut-off date specified in the notice under subsection 194E(1) for the first assessment period, the Minister must give the Scientific Committee the nominations that the Minister:

(a) had received before the end of that cut-off date; and

(b) had not already forwarded to the Scientific Committee, under section 191 (as in force before the commencement of this section), to assess; and

(c) had not already rejected under section 191 (as in force before the commencement of this section); and

(d) does not reject under subsection (3).

Nominations in relation to later assessment periods

(2) Within 30 business days after the cut-off date (the ***current cut-off date***) specified in the notice under subsection 194E(1) for an assessment period (other than the first) for a Subdivision A List, the Minister must give the Scientific Committee the nominations that were received by the Minister in the period:

(a) starting immediately after the end of the cut-off date specified in the notice under subsection 194E(1) for the

Authorised Version C2016C00777 registered 12/07/2016

immediately preceding assessment period for the Subdivision A List; and

(b) ending at the end of the current cut-off date for the Subdivision A List;

other than any such nominations that the Minister has rejected under subsection (3).

Minister may reject nominations

(3) The Minister may, in writing, reject a nomination if the Minister considers that:

(a) the nomination is vexatious, frivolous or not made in good faith; or

(b) the Minister considers that regulations referred to in paragraph 194E(3)(b) or (c) have not been complied with in relation to the nomination.

(4) If a nomination is rejected under paragraph (3)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

Definition

(5) In this section:

nomination means a nomination of an item for inclusion in a Subdivision A List.

194G Scientific Committee to prepare proposed priority assessment list

(1) Within 40 business days after the Scientific Committee receives the nominations as required by subsection 194F(1) in relation to an assessment period for a Subdivision A List, the Committee must prepare and give to the Minister a list (the ***proposed priority assessment list***) for the assessment period for the Subdivision A List.

Authorised Version C2016C00777 registered 12/07/2016

(2) The proposed priority assessment list for the Subdivision A List is to consist of such of the items that are eligible for assessment consideration in relation to the assessment period for the Subdivision A List as the Scientific Committee considers it appropriate to include in the proposed priority assessment list, having regard to:

(a) any conservation themes determined by the Minister under section 194D in relation to the assessment period for the Subdivision A List; and

(b) the Committee's own views about what should be given priority in relation to the assessment period for the Subdivision A List; and

(c) the Committee's capacity to make assessments under this Division while still performing its other functions; and

(d) any other matters that the Committee considers appropriate.

(3) An item is ***eligible for assessment consideration*** in relation to the assessment period for a Subdivision A List if:

(a) the item has been nominated by a nomination referred to in subsection (1); or

(b) the Committee itself wishes to nominate the item for inclusion in the Subdivision A List; or

(c) the item was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) for the Subdivision A List but was not included in the finalised priority assessment list for that assessment period for the Subdivision A List.

(4) Without limiting the generality of the Scientific Committee's discretion under subsection (2), the Committee does not have to include in the proposed priority assessment list an item that has been nominated if the Committee considers that:

(a) if the item is not on the Subdivision A List concerned—it is unlikely that the item is eligible to be included in the Subdivision A List; or

(b) if the nomination is for the transfer of the item to another category in the Subdivision A List concerned—it is unlikely

Authorised Version C2016C00777 registered 12/07/2016

that the item is eligible to be included in that other category of the Subdivision A List.

(5) For the purposes of subsection (4), the Committee is not required to have regard to any information beyond the information that was included in the nomination.

(6) The proposed priority assessment list is not a legislative instrument.

194H Matters to be included in proposed priority assessment list

(1) The proposed priority assessment list for an assessment period for a Subdivision A List is to include, for each item in the proposed priority assessment list:

(a) a description of the item; and

(b) an assessment completion time; and

(c) any other information required by the regulations.

(2) The assessment completion time for an item must be either:

(a) a time that is at or before the end of the assessment period for the proposed priority assessment list; or

(b) if the Scientific Committee considers it likely that making an assessment in relation to the item will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period for the proposed priority assessment list).

194J Statement to be given to Minister with proposed priority assessment list

(1) When the Scientific Committee gives the Minister the proposed priority assessment list for an assessment period for a Subdivision A List, the Committee must also give the Minister a statement setting out such information as the Committee considers appropriate relating to:

Authorised Version C2016C00777 registered 12/07/2016

(a) for each item that is included in the proposed priority assessment list—why the Committee included the item in the list; and

(b) for each item that is not included in the proposed priority assessment list but that was eligible for assessment consideration because of paragraph 194G(3)(a) or (c)—why the Committee did not include the item in the proposed priority assessment list.

(2) The statement must also identify, as items nominated by the Scientific Committee, any items that are included in the proposed priority assessment list because the Committee itself wishes to nominate them (see paragraph 194G(3)(b)).

194K The finalised priority assessment list

(1) Within 20 business days after the Minister, under section 194G, receives the proposed priority assessment list for an assessment period for a Subdivision A List, the Minister may, in writing, make changes to the proposed priority assessment list as mentioned in subsection (2).

(2) The changes the Minister may make are as follows:

(a) including an item in the proposed priority assessment list (and also including the matters referred to in subsection 194H(1));

(b) omitting an item from the proposed priority assessment list (and also omitting the matters referred to in subsection 194H(1));

(c) changing the assessment completion time for an item in the proposed priority assessment list;

(d) any other changes of a kind permitted by the regulations.

(3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.

(4) At the end of the period of 20 business days referred to in subsection (1), the proposed priority assessment list, as changed (if

Authorised Version C2016C00777 registered 12/07/2016

at all) by the Minister, becomes the ***finalised priority assessment list*** for the assessment period for the Subdivision A List.

(5) The Minister must notify the Scientific Committee of all changes that the Minister makes to the proposed priority assessment list.

(6) The finalised priority assessment list is not a legislative instrument.

194L Publication of finalised priority assessment list

(1) The Scientific Committee must publish the finalised priority assessment list for an assessment period for a Subdivision A List on the internet.

(2) The Scientific Committee must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

194M Scientific Committee to invite comments on items in finalised priority assessment list

(1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must publish a notice inviting people to make comments on the item.

(2) The Scientific Committee may, under subsection (1), publish a single notice relating to all of the items on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the items.

(3) A notice under subsection (1), in relation to an item or items:
  (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
  (b) must identify the item or items to which the notice relates; and
  (c) if the Subdivision A List is the list referred to in section 178 or 181—must identify the category of the Subdivision A List in which the item or items are proposed to be included; and

Authorised Version C2016C00777 registered 12/07/2016

(d) must invite people to make comments, to the Scientific Committee, setting out:
  (i) if the Subdivision A List is the list referred to in section 178 or 181—views about whether the item or items are eligible for inclusion in that category of the Subdivision A List; and
  (ii) if the Subdivision A List is the list referred to in section 183—views whether the item or items are eligible for inclusion in the Subdivision A List; and
  (iii) reasons supporting those views; and
(e) must specify the date (the ***cut-off date***) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
(f) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
(g) may also invite people to comment on other matters that the Scientific Committee considers appropriate; and
(h) may also include any other information that the Scientific Committee considers appropriate.

(4) The regulations must provide for the following:
  (a) how a notice under subsection (1) is to be published;
  (b) the manner and form for making comments.

194N Scientific Committee to assess items on finalised priority assessment list and give assessments to Minister

(1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P):
  (a) make a written assessment of:
    (i) whether the item is eligible for inclusion in the Subdivision A List; and

Authorised Version C2016C00777 registered 12/07/2016

(ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which the item is eligible to be included; and

(b) give to the Minister:

(i) the written assessment (or a copy of it); and

(ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).

(2) In making an assessment in relation to an item, the Scientific Committee, subject to subsections (3) and (4):

(a) must take into account the comments the Committee receives in response to the notice under subsection 194M(1) in relation to the item; and

(b) may seek, and have regard to, information or advice from any source.

(3) The Scientific Committee is not required to take a comment referred to in paragraph (2)(a) into account if:

(a) the Committee does not receive the comment until after the cut-off date specified in the notice under subsection 194M(1) in relation to the item; or

(b) the Committee considers that regulations referred to in paragraph 194M(4)(b) have not been complied with in relation to the comment.

(4) In making an assessment, the only matters the Scientific Committee may consider are matters relating to:

(a) whether the item is eligible for inclusion in the Subdivision A List; or

(b) the effect that including the item in that List could have on the survival of the native species or ecological community concerned.

194P Time by which assessments to be provided to Minister

(1) Subsection 194N(1) must be complied with, in relation to an item included in the finalised priority assessment list for an assessment

Authorised Version C2016C00777 registered 12/07/2016

period for a Subdivision A List, by the assessment completion time specified in the finalised priority assessment list for the item, or by that time as extended under this section.

(2) The Scientific Committee may request the Minister to extend the assessment completion time (or that time as previously extended) if the Committee considers that it needs more time to make the assessment.

(3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.

(4) An extension under subsection (3) must be made in writing.

(5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

194Q Decision about inclusion of an item in the Subdivision A List

Minister to decide whether or not to include item

(1) After receiving from the Scientific Committee an assessment under section 194N of an item, the Minister must:

(a) include the item in the Subdivision A List concerned; or

(b) in writing, decide not to include the item in the Subdivision A List concerned.

Note 1: Under this subsection the Minister can transfer an item already on a Subdivision A List to a different category in the List (see subsection 194B(1)).

Note 2: Sections 186, 187 and 188 contain rules about including items in a Subdivision A List.

(2) If, under subsection (1), the Minister transfers an item to a category of the Subdivision A List, the Minister must at the same time

Authorised Version C2016C00777 registered 12/07/2016

delete the item from the category in which it was included before the transfer.

(3) Subject to subsection (4), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.

(4) The Minister may, in writing, extend or further extend the period for complying with subsection (1).

(5) Particulars of an extension or further extension under subsection (4) must be published on the internet and in any other way required by regulations.

(6) For the purpose of deciding what action to take under subsection (1) in relation to the item:

(a) the Minister must have regard to:

(i) the Scientific Committee's assessment of the item; and

(ii) the comments (if any), a copy of which were given to the Minister under subsection 194N(1) with the assessment; and

(b) the Minister may seek, and have regard to, information or advice from any source.

Additional requirements if Minister decides to include item

(7) If the Minister includes the item in the Subdivision A List, he or she must, within a reasonable time:

(a) if the item was nominated by a person in response to a notice under subsection 194E(1)—advise the person that the item has been included in the Subdivision A List; and

(b) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and

(c) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.

Authorised Version C2016C00777 registered 12/07/2016

Additional requirements if Minister decides not to include item

(8) If the Minister decides not to include the item in the Subdivision A List, the Minister must, within 10 business days after making the decision:
  (a) publish the decision on the internet; and
  (b) if the item was nominated by a person in response to a notice under subsection 194E(1)—advise the person of the decision, and of the reasons for the decision.

194R Scientific Committee may obtain advice

In performing its functions under this Subdivision, the Scientific Committee may obtain advice from a person with expertise relevant to the inclusion of an item in a Subdivision A List.

194S Co-ordination with Australian Heritage Council—Committee undertaking assessment

(1) This section applies if:
  (a) the Scientific Committee undertakes an assessment under this Subdivision; and
  (b) before giving the assessment to the Minister, the Committee becomes aware that:
    (i) the Australian Heritage Council is undertaking, or has undertaken, an assessment of a place under Subdivision BA or BB of Division 1A of Part 15 or under Subdivision BA or BB of Division 3A of Part 15; and
    (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).

(2) A member of the Scientific Committee may discuss the matter with a member of the Australian Heritage Council.

Authorised Version C2016C00777 registered 12/07/2016

(3) Before the Scientific Committee gives an assessment to the Minister under this Subdivision, the Committee must comply with subsection (4) or (6).

(4) If the Australian Heritage Council has not yet given the Minister an assessment that deals with that matter, the Scientific Committee must:

(a) give the Council a copy of the assessment that the Committee proposes to give to the Minister; and

(b) invite the Council to give the Committee its comments in relation to that matter; and

(c) take into account, in finalising the assessment that the Committee gives the Minister, any comments that the Council makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.

(5) If the Scientific Committee gives the Australian Heritage Council a copy of a proposed assessment under paragraph (4)(a), the Committee must also give the Council a copy of the assessment that the Committee gives the Minister.

(6) If:

(a) the Australian Heritage Council has already given the Minister an assessment that deals with that matter; and

(b) the Scientific Committee has been given a copy of that assessment;

the Committee must take that assessment into account in finalising the assessment that the Committee gives the Minister.

(7) If, under section 324JR, 324JS, 341JQ or 341JR, the Australian Heritage Council gives the Scientific Committee a proposed assessment, or an assessment, that deals with a particular matter because the Committee is undertaking an assessment that deals with that matter, a member of the Committee may discuss that matter with a member of the Council.

(8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 189B.

Authorised Version C2016C00777 registered 12/07/2016

194T Co-ordination with Australian Heritage Council—Committee given assessment to Minister

(1) This section applies if:
  (a) the Scientific Committee has given to the Minister an assessment under this Subdivision; and
  (b) the Committee is or becomes aware that:
    (i) the Australian Heritage Council is undertaking an assessment of a place under Subdivision BA or BB of Division 1A of Part 15 or under Subdivision BA or BB of Division 3A of Part 15; and
    (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).

(2) The Scientific Committee must, within 7 days after giving the assessment to the Minister, or becoming aware, as referred to in paragraph (1)(b):
  (a) ensure the Australian Heritage Council is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
  (b) give the Council a copy of the assessment.

(3) A member of the Scientific Committee may discuss the matter with a member of the Australian Heritage Council.

(4) Subsections (2) and (3) have effect despite section 189B.

Subdivision B—Permit system

195 Subdivision does not apply to cetaceans

This Subdivision does not apply to a member of a listed threatened species that is a cetacean.

Authorised Version C2016C00777 registered 12/07/2016

196 Killing or injuring member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a species or a member of an ecological community; and

(c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and

(d) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

196A Strict liability for killing or injuring member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a native species or a member of an ecological community; and

(c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and

(d) the member is in or on a Commonwealth area.

Authorised Version C2016C00777 registered 12/07/2016

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

196B Taking etc. member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a species or a member of an ecological community; and

(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and

(c) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

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

Authorised Version C2016C00777 registered 12/07/2016

196C Strict liability for taking etc. member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a native species or a member of an ecological community; and

(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and

(c) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

196D Trading etc. member of listed threatened species or community taken in Commonwealth area

(1) A person commits an offence if:

(a) the person trades, keeps or moves a member of a species or a member of an ecological community; and

(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and

(c) the member has been taken in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

Authorised Version C2016C00777 registered 12/07/2016

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

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

196E Strict liability for trading etc. member of listed threatened species or community taken in Commonwealth area

(1) A person commits an offence if:

(a) the person trades, keeps or moves a member of a native species or a member of an ecological community; and

(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and

(c) the member has been taken in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

196F Aggravated offence—member of listed threatened species that is a dugong or turtle

(1) For the purposes of this Subdivision, an offence against section 196, 196A, 196B, 196C, 196D or 196E (the ***underlying***

Authorised Version C2016C00777 registered 12/07/2016

offence) is an ***aggravated offence*** if the member to which the underlying offence relates is:

(a) a member of a listed threatened species; and

(b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(g) and (h), and on the day this section commenced, these species were listed threatened species.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(3) Strict liability applies to the physical elements of circumstance, that the member is:

(a) a member of a listed threatened species; and

(b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

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

197 Certain actions are not offences

Sections 196, 196A, 196B, 196C, 196D, 196E and 207B do not apply to:

(a) an action authorised by a permit that was issued under section 201 and is in force; or

(b) an action provided for by, and done in accordance with, a recovery plan in force under Division 5; or

(c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5) or (6) or 18A(1) or (2); or

(d) an action that:

(i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2); and

(ii) is taken in accordance with a management arrangement or authorisation process that is an accredited

Authorised Version C2016C00777 registered 12/07/2016

management arrangement or an accredited authorisation process for the purposes of the declaration; or

(da) an action that:

(i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2); and

(ii) is taken in accordance with the bioregional plan to which the declaration relates; or

(db) in the case of sections 196B, 196C, 196D and 196E—an action that is trading, keeping or moving a member of a listed threatened species or a listed ecological community, if:

(i) when the member of the species or community was taken, the species or community was not a listed threatened species or a listed threatened ecological community, as the case requires; and

(ii) the trading, keeping or moving of the member of the species or community occurs during the period of 6 months that started when the species or community became a listed threatened species or a listed threatened ecological community, as the case requires; or

(e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed threatened species or listed threatened ecological community; or

(f) an action that is reasonably necessary to prevent a risk to human health; or

(g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

Authorised Version C2016C00777 registered 12/07/2016

(j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 208A; or

(l) an action, to the extent that it is covered by subsection 517A(7); or

(m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

(i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and

(ii) is in force; or

(p) an action that is taken in accordance with a permit that:

(i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and

(ii) is in force; or

(q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p).

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

Authorised Version C2016C00777 registered 12/07/2016

198 Operation of sections 18 and 18A not affected

To avoid doubt, sections 196, 196A, 196B, 196C, 196D, 196E, 196F and 197 do not affect the operation of section 18 or 18A.

199 Failing to notify taking of listed threatened species or listed ecological community

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action either:

(i) results in the death or injury of a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area; or

(ii) consists of, or involves, trading, taking, keeping or moving a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area;

(b) the person's action does not constitute an offence against section 196, 196A, 196B, 196C, 196D or 196E, otherwise than because of paragraph 197(db);

(c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 197 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 196, 196A, 196B, 196C, 196D or 196E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 204 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

Authorised Version C2016C00777 registered 12/07/2016

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

(a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or

(b) the action is in a class of actions:

(i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and

(ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

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

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:

(a) fails to do an act; and

(b) the failing to do the act results in a contravention of subsection (2).

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

200 Application for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 201.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:

Authorised Version C2016C00777 registered 12/07/2016

(a) details of the application; and
(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

201 Minister may issue permits

(1) Subject to subsections (3) and (3A), the Minister may, on application by a person under section 200, issue a permit to the person.

(2) A permit authorises its holder to take an action specified in the permit without breaching section 196, 196A, 196B, 196C, 196D, 196E or 207B.

(3) The Minister must not issue the permit unless satisfied that:
(a) the specified action will contribute significantly to the conservation of the listed threatened species or listed threatened ecological community concerned; or
(b) the impact of the specified action on a member of the listed threatened species or listed threatened ecological community concerned is incidental to, and not the purpose of, the taking of the action and:
(i) the taking of the action will not adversely affect the survival or recovery in nature of that species or ecological community; and
(ii) the taking of the action is not inconsistent with a recovery plan that is in force for that species or ecological community; and
(iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species or ecological community; or

Authorised Version C2016C00777 registered 12/07/2016

(c) the specified action is of particular significance to indigenous tradition and will not adversely affect the survival or recovery in nature of the listed threatened species or listed threatened ecological community concerned; or

(d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed threatened species or listed threatened ecological community concerned.

(3A) The Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the listed threatened species or listed threatened ecological community concerned.

(4) In this Act:

indigenous tradition means the body of traditions, observances, customs and beliefs of indigenous persons generally or of a particular group of indigenous persons.

(5) In making a decision on the application, the Minister must consider the comments (if any) received:

(a) in response to the invitation under subsection 200(3) for anyone to give the Minister comments on whether the permit should be issued; and

(b) within the period specified in the invitation.

202 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The Minister may, in accordance with the regulations:

(a) vary or revoke a condition of a permit; or

(b) impose further conditions of a permit.

(3) Without limiting subsections (1) and (2), conditions of a permit may include conditions stating the period within which the action specified in the permit may be taken.

Authorised Version C2016C00777 registered 12/07/2016

203 Contravening conditions of a permit

The holder of a permit commits an offence punishable on conviction by a fine not exceeding 300 penalty units if:

(a) he or she does, or fails to do, an act or thing; and

(b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

204 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:

(a) the permit contains a condition permitting the holder to do so; and

(b) the authority is given in accordance with any requirements set out in the condition.

(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

Authorised Version C2016C00777 registered 12/07/2016

205 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

206 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:

(a) suspend a permit for a specified period; or

(b) cancel a permit.

206A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Appeals Tribunal for review of a decision:

(a) to issue or refuse a permit; or

(b) to specify, vary or revoke a condition of a permit; or

(c) to impose a further condition of a permit; or

(d) to transfer or refuse to transfer a permit; or

(e) to suspend or cancel a permit.

(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).

207 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

(a) the grant or the transfer of a permit;

(b) the variation or revocation of a condition of a permit;

(c) the imposition of a further condition of a permit.

Authorised Version C2016C00777 registered 12/07/2016

Subdivision BA—Protecting critical habitat

207A Register of critical habitat

(1) The Minister must cause to be kept in accordance with the regulations (if any) a register in which the Minister may list habitat identified by the Minister in accordance with the regulations as being critical to the survival of a listed threatened species or listed threatened ecological community.

(1A) In considering whether to list habitat, the Minister must take into account the potential conservation benefit of listing the habitat.

(1B) Subsection (1) does not limit the matters:

(a) that the Minister may take into account in considering whether to list habitat; or

(b) that the regulations may require or permit the Minister to take into account in considering whether to list habitat.

(2) The regulations must require the Minister to consider scientific advice in identifying the habitat.

(3) The register must be made available for public inspection in accordance with the regulations (if any).

(3A) Particular material included in the register does not have to be made available for public inspection if the Minister considers that the interests of relevant landholders could be impeded or compromised by:

(a) the disclosure of the material; or

(b) without limiting paragraph (a)—the presence or actions of persons if the material were disclosed.

(4) Habitat listed in the register in relation to a species or ecological community is ***critical habitat*** for the species or ecological community.

Authorised Version C2016C00777 registered 12/07/2016

207B Offence of knowingly damaging critical habitat

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the person knows that the action significantly damages or will significantly damage critical habitat for a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and

(c) the habitat is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

(3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

(4) To avoid doubt, this section does not affect the operation of Division 2, 3 or 4.

207C Sale or lease of Commonwealth land containing critical habitat

(1) This section applies to a Commonwealth agency that executes a contract for the sale or lease to someone else of Commonwealth land that includes critical habitat for a listed threatened species or listed threatened ecological community. It does not matter whether the Commonwealth agency executes the contract for the Commonwealth or on its own behalf.

(2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the critical habitat.

Authorised Version C2016C00777 registered 12/07/2016

(3) The Commonwealth agency must take reasonable steps to ensure as far as practicable that the covenant binds the successors in title of the buyer or lessee (as appropriate).

Subdivision C—Miscellaneous

208A Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:

(a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

(b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or

(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:

(i) made by a State or self-governing Territory; and

(ii) in force under a law of the State or self-governing Territory; or

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed threatened species (other than conservation dependent species) are not killed or injured as a result of the fishing; and

Authorised Version C2016C00777 registered 12/07/2016

(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

208 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of members of listed threatened species or listed threatened ecological communities killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which members of listed threatened species or listed threatened ecological communities may be killed or taken otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to listed threatened species or listed threatened ecological communities; and

(d) provide for the protection and conservation of listed threatened species or listed threatened ecological communities; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.

Authorised Version C2016C00777 registered 12/07/2016

Division 2—Migratory species

Subdivision A—Listing

209 Listed migratory species

(1) The Minister must:
  (a) establish a list of migratory species for the purposes of this Act; and
  (b) amend the list, as necessary, so that it includes all species required to be included in the list under subsection (3).

(2) The Minister must establish the list within 30 days after the commencement of this Act.

(3) The list must include:
  (a) all migratory species that are:
    (i) native species; and
    (ii) from time to time included in the appendices to the Bonn Convention; and
  (b) all migratory species from time to time included in annexes established under JAMBA and CAMBA; and
  (c) all native species from time to time identified in a list established under, or an instrument made under, an international agreement approved by the Minister under subsection (4).

  The list must not include any other species.

(4) The Minister may, by legislative instrument, approve an international agreement for the purposes of subsection (3) if satisfied it is an agreement relevant to the conservation of migratory species.

(6) The Minister may correct an inaccuracy or update the name of a migratory species.

Authorised Version C2016C00777 registered 12/07/2016

(7) The list of migratory species made under subsection (1), and any amendments to the list made under paragraph (1)(b) or subsection (6), are legislative instruments, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the list or any amendments.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the list or any amendments. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

(8) In this Act:

migratory species has the meaning given by Article I of the Bonn Convention.

Subdivision B—Permit system

210 Subdivision does not apply to members of listed threatened species or cetaceans

This Subdivision does not apply to a member of a listed migratory species that is a member of a listed threatened species or a cetacean.

211 Killing or injuring member of listed migratory species

(1) A person commits an offence if:
(a) the person takes an action; and
(b) the action results in the death or injury of a member of a species; and
(c) the member is a member of a listed migratory species; and
(d) the member is in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Authorised Version C2016C00777 registered 12/07/2016

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

211A Strict liability for killing or injuring member of listed migratory species

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a migratory species; and

(c) the member is a member of a listed migratory species; and

(d) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

211B Taking etc. member of listed migratory species

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a species; and

(b) the member is a member of a listed migratory species; and

(c) the member is in or on a Commonwealth area.

Penalty:

Authorised Version C2016C00777 registered 12/07/2016

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

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

211C Strict liability for taking etc. member of listed migratory species

(1) A person commits an offence if:
(a) the person takes, trades, keeps or moves a member of a migratory species; and
(b) the member is a member of a listed migratory species; and
(c) the member is in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—1,500 penalty units;
(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

211D Trading etc. member of listed migratory species taken in Commonwealth area

(1) A person commits an offence if:
(a) the person trades, keeps or moves a member of a species; and

Authorised Version C2016C00777 registered 12/07/2016

(b) the member is a member of a listed migratory species; and
(c) the member has been taken in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

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

211E Strict liability for trading etc. member of listed migratory species taken in Commonwealth area

(1) A person commits an offence if:
(a) the person trades, keeps or moves a member of a migratory species; and
(b) the member is a member of a listed migratory species; and
(c) the member has been taken in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—1,500 penalty units;
(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

Authorised Version C2016C00777 registered 12/07/2016

211F Aggravated offence—member of listed migratory species that is a dugong or turtle

(1) For the purposes of this Subdivision, an offence against section 211, 211A, 211B, 211C, 211D or 211E (the ***underlying offence***) is an ***aggravated offence*** if the member to which the underlying offence relates is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(f), (g) and (h), and on the day this section commenced, these species were listed migratory species.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(3) Strict liability applies to the physical element of circumstance, that the member is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

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

212 Certain actions are not offences

(1) Sections 211, 211A, 211B, 211C, 211D and 211E do not apply to:
- (a) an action authorised by a permit that was issued under section 216 and is in force; or
- (b) an action provided for by, and taken in accordance with, a wildlife conservation plan made or adopted under Division 5 and in force; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); or
- (d) an action that:
  - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); and
  - (ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited

Authorised Version C2016C00777 registered 12/07/2016

management arrangement or an accredited authorisation process for the purposes of the declaration; or

(da) an action that:

(i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); and

(ii) is taken in accordance with the bioregional plan to which the declaration relates; or

(db) in the case of sections 211B, 211C, 211D and 211E—an action that is trading, keeping or moving a member of a listed migratory species, if:

(i) when the member of the species was taken, the species was not a listed migratory species; and

(ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed migratory species; or

(e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed migratory species; or

(f) an action that is reasonably necessary to prevent a risk to human health; or

(g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

(j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 222A; or

Authorised Version C2016C00777 registered 12/07/2016

(l) an action, to the extent that it is covered by subsection 517A(7); or

(m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

(i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and

(ii) is in force; or

(p) an action that is taken in accordance with a permit that:

(i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and

(ii) is in force; or

(q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p); or

(r) an action that is taken in the course of recreational fishing and the action:

(i) consists of, or involves, taking, trading, keeping or moving; or

(ii) results in the death or injury of;

a shortfin mako shark, a longfin mako shark or a porbeagle shark.

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

Authorised Version C2016C00777 registered 12/07/2016

(2) For the purposes of paragraph (1)(r), ***recreational fishing*** includes (but is not limited to) the following types of fishing:

(a) fishing from a charter boat (within the meaning of the *Fisheries Management Act 1991*), including fishing by the person in charge of the boat, the crew of the boat or any other person on the boat;

(b) fishing in a fishing competition (whether or not in a professional capacity);

(c) fishing that is undertaken primarily for:

(i) inclusion on a website, or in a film, video, television program or radio program; or

(ii) description or representation in a magazine, newspaper, book or other such document.

213 Operation of sections 20 and 20A not affected

To avoid doubt, sections 211, 211A, 211B, 211C, 211D, 211E, 211F and 212 do not affect the operation of section 20 or 20A.

214 Failing to notify taking etc. of listed migratory species

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action either:

(i) results in the death or injury of a member of a listed migratory species that is in or on a Commonwealth area; or

(ii) consists of, or involves, trading, taking, keeping or moving a member of a listed migratory species that is in or on a Commonwealth area;

(b) the person's action does not constitute an offence against section 211, 211A, 211B, 211C, 211D or 211E, otherwise than because of paragraph 212(db) or (r);

(c) the person's action is not an action that the person was authorised by a permit to take.

Authorised Version C2016C00777 registered 12/07/2016

Note 1: Section 212 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 211, 211A, 211B, 211C, 211D or 211E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 219 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

(a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or

(b) the action is in a class of actions:

(i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and

(ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

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

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:

(a) fails to do an act; and

(b) the failing to do the act results in a contravention of subsection (2).

Authorised Version C2016C00777 registered 12/07/2016

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

215 Application for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 216.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:

(a) details of the application; and

(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

216 Minister may issue permits

(1) Subject to subsection (3), the Minister may, on application by a person under section 215, issue a permit to the person.

(2) A permit authorises its holder to take an action specified in the permit without breaching section 211, 211A, 211B, 211C, 211D or 211E.

(3) The Minister must not issue the permit unless satisfied that:

(a) the specified action will contribute significantly to the conservation of the listed migratory species concerned or other listed migratory species; or

(b) the impact of the specified action on a member of the listed migratory species concerned is incidental to, and not the purpose of, the taking of the action and:

Authorised Version C2016C00777 registered 12/07/2016

(i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and

(ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and

(iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or

(c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed migratory species concerned, or a population of that species; or

(d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed migratory species concerned.

(4) In making a decision on the application, the Minister must consider the comments (if any) received:

(a) in response to the invitation under subsection 215(3) for anyone to give the Minister comments on whether the permit should be issued; and

(b) within the period specified in the invitation.

217 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The Minister may, in accordance with the regulations:

(a) vary or revoke a condition of a permit; or

(b) impose further conditions of a permit.

218 Contravening conditions of a permit

The holder of a permit commits an offence punishable on conviction by a fine not exceeding 300 penalty units if:

Authorised Version C2016C00777 registered 12/07/2016

(a) he or she does, or fails to do, an act or thing; and
(b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

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

219 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:
(a) the permit contains a condition permitting the holder to do so; and
(b) the authority is given in accordance with any requirements set out in the condition.

(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

220 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

Authorised Version C2016C00777 registered 12/07/2016

221 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:

(a) suspend a permit for a specified period; or

(b) cancel a permit.

221A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Appeals Tribunal for review of a decision:

(a) to issue or refuse a permit; or

(b) to specify, vary or revoke a condition of a permit; or

(c) to impose a further condition of a permit; or

(d) to transfer or refuse to transfer a permit; or

(e) to suspend or cancel a permit.

(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).

222 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

(a) the grant or the transfer of a permit;

(b) the variation or revocation of a condition of a permit;

(c) the imposition of a further condition of a permit.

Subdivision C—Miscellaneous

222A Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:

(a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

Authorised Version C2016C00777 registered 12/07/2016

(b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or

(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:

(i) made by a State or self-governing Territory; and

(ii) in force under a law of the State or self-governing Territory; or

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and

(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

Authorised Version C2016C00777 registered 12/07/2016

223 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of members of listed migratory species killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which members of listed migratory species may be killed or taken otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to listed migratory species; and

(d) provide for the protection and conservation of listed migratory species; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.

Authorised Version C2016C00777 registered 12/07/2016

Division 3—Whales and other cetaceans

Subdivision A—Application of Division

224 Application of Division

(1) This Division extends to acts, omissions, matters and things outside Australia (whether in a foreign country or not), except so far as the contrary intention appears.

(2) A provision of this Division that has effect in relation to a place outside the outer limits of the Australian Whale Sanctuary applies only in relation to:
  (a) Australian citizens; and
  (b) persons who:
    (i) are not Australian citizens; and
    (ii) hold permanent visas under the *Migration Act 1958*; and
    (iii) are domiciled in Australia or an external Territory; and
  (c) corporations incorporated in Australia or an external Territory; and
  (d) the Commonwealth; and
  (e) Commonwealth agencies; and
  (f) Australian aircraft; and
  (g) Australian vessels; and
  (h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).

(3) This Division applies to a vessel as if it were an Australian vessel if:
  (a) the vessel is a boat within the meaning of the *Fisheries Management Act 1991*; and
  (b) a declaration, under subsection 4(2) of that Act, that the vessel is taken to be an Australian boat is in force.

Authorised Version C2016C00777 registered 12/07/2016

Subdivision B—Australian Whale Sanctuary and important cetacean habitat areas

225 Australian Whale Sanctuary

(1) The Australian Whale Sanctuary is established in order to give formal recognition of the high level of protection and management afforded to cetaceans in Commonwealth marine areas and prescribed waters.

(2) The ***Australian Whale Sanctuary*** comprises:

(a) any waters of the sea inside the seaward boundary of the exclusive economic zone, except:

(i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and

(ii) waters within the limits of a State or the Northern Territory; and

(b) any waters over the continental shelf, except:

(i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and

(ii) waters within the limits of a State or the Northern Territory; and

(iii) waters covered by paragraph (a); and

(c) so much of the coastal waters of a State or the Northern Territory as are prescribed waters.

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

226 Prescribed waters

(1) The regulations may declare the whole, or a specified part, of the coastal waters of a State or the Northern Territory to be prescribed waters.

Authorised Version C2016C00777 registered 12/07/2016

(2) Before the Governor-General makes a regulation under subsection (1), the Minister must obtain the agreement of the relevant Minister of the State or the Northern Territory.

227 Coastal waters

(1) Section 15B of the *Acts Interpretation Act 1901* does not apply in relation to this Division.

(2) The ***coastal waters*** of a State or the Northern Territory are:

(a) the part or parts of the territorial sea that are:

(i) within 3 nautical miles of the baseline of the territorial sea; and

(ii) adjacent to that State or Territory; and

(b) any marine or tidal waters that are inside that baseline and are adjacent to that State or Territory but are not within the limits of a State or that Territory.

Note: Generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast.

(3) Any part of the territorial sea that is adjacent to the Jervis Bay Territory is, for the purposes of subsection (2), taken to be adjacent to New South Wales.

228 Minister may make declaration for coastal waters

(1) If the Minister is satisfied that a law of a State or the Northern Territory adequately protects cetaceans in the coastal waters, or a part of the coastal waters, of the State or Territory, the Minister may make a declaration accordingly, whether or not those coastal waters or that part are prescribed waters.

(2) A declaration must be in writing.

Authorised Version C2016C00777 registered 12/07/2016

228A Important cetacean habitat areas

(1) The Minister may, by legislative instrument, declare a specified area in the Australian Whale Sanctuary to be an important cetacean habitat area.

(2) The regulations may specify criteria to be applied by the Minister in determining whether to declare an area to be an important cetacean habitat area. If regulations are made for the purposes of this section, the Minister may declare an area to be an important cetacean habitat area only if he or she is satisfied that the area meets the criteria prescribed by the regulations.

Subdivision C—Offences

229 Killing or injuring a cetacean

(1) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action results in the death or injury of a cetacean; and
  (c) the cetacean is in:
    (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
    (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

Authorised Version C2016C00777 registered 12/07/2016

(2) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

229A Strict liability for killing or injuring a cetacean

(1) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action results in the death or injury of a cetacean; and
  (c) the cetacean is in:
    (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
    (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

229B Intentionally taking etc. a cetacean

(1) A person commits an offence if:
  (a) the person takes, trades, keeps, moves or interferes with a cetacean; and
  (b) the cetacean is in:
    (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the

Authorised Version C2016C00777 registered 12/07/2016

Northern Territory for which a declaration under section 228 is in force); or

(ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

(3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

(4) In this Act:

interfere with a cetacean includes harass, chase, herd, tag, mark or brand the cetacean.

trade a cetacean:

(a) includes:

(i) buy the cetacean, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or

(ii) sell the cetacean, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or

(iii) cause or allow any of the acts referred to in subparagraph (i) or (ii) to be done; but

(b) does not include export the cetacean from Australia or an external Territory or import it into Australia or an external Territory.

Note: For provisions relating to export or import, see Part 13A.

Authorised Version C2016C00777 registered 12/07/2016

229C Strict liability for taking etc. a cetacean

(1) A person commits an offence if:

(a) the person takes, trades, keeps, moves or interferes with a cetacean; and

(b) the cetacean is in:

(i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or

(ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a) and (b).

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

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

229D Treating cetaceans

Treating unlawfully killed or taken cetaceans

(1) A person commits an offence if:

(a) the person treats a cetacean; and

(b) the cetacean has been:

(i) killed in contravention of section 229 or 229A; or

(ii) taken in contravention of section 229B or 229C.

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

Authorised Version C2016C00777 registered 12/07/2016

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) An offence against subsection (1) is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

Treating unlawfully imported cetaceans

(2A) A person commits an offence if:
(a) the person treats a cetacean; and
(b) the cetacean has been unlawfully imported.

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

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

(2B) An offence against subsection (2A) is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

(3) In this Act:

treat a cetacean means divide or cut up, or extract any product from, the cetacean.

230 Possession of cetaceans

Possession of unlawfully killed cetaceans

(1) A person commits an offence if:
(a) the person has in his or her possession:
(i) a cetacean; or
(ii) a part of a cetacean; or
(iii) a product derived from a cetacean; and
(b) the cetacean has been:
(i) killed in contravention of section 229 or 229A; or

Authorised Version C2016C00777 registered 12/07/2016

(ii) taken in contravention of section 229B or 229C.

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

(2) An offence against subsection (1) is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

Possession of unlawfully imported cetaceans

(3) A person commits an offence if:

(a) the person has in his or her possession:

(i) a cetacean; or

(ii) a part of a cetacean; or

(iii) a product derived from a cetacean; and

(b) the cetacean, part or product, as the case may be, has been unlawfully imported.

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

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

(4) An offence against subsection (3) is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

231 Certain actions are not offences

Sections 229, 229A, 229B, 229C, 229D and 230 do not apply to:

(a) an action authorised by a permit that was issued under section 238 and is in force; or

(aa) an action that is whale watching carried out in accordance with regulations referred to in paragraph 238(3)(c), but only if:

(i) the whale watching is not carried out for a commercial purpose; or

Authorised Version C2016C00777 registered 12/07/2016

(ii) the whale watching is carried out in an area that is not an important cetacean habitat area; or

(b) an action provided for by, and taken in accordance with, a recovery plan, or a wildlife conservation plan, made or adopted under Division 5 and in force; or

(ba) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7); or

(bb) an action that:

(i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7); and

(ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration; or

(bc) an action that:

(i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7); and

(ii) is taken in accordance with the bioregional plan to which the declaration relates; or

(c) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering of a cetacean; or

(d) an action that is reasonably necessary to prevent a risk to human health; or

(e) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(f) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

Authorised Version C2016C00777 registered 12/07/2016

(g) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

(ga) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(h) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 245; or

(i) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(j) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(k) an action that consists of the transit of a cetacean through a Commonwealth area in circumstances where the cetacean was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (ba), (bb), (bc), (ga), (h), (i) or (j).

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

232 Action to be taken on killing etc. cetaceans

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action:

(i) results in the injury or death of a cetacean, or consists of taking a cetacean, in the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters of a State or the Northern Territory for which a declaration under section 228 is in force) or in waters beyond the outer limits of the Australian Whale Sanctuary; or

Authorised Version C2016C00777 registered 12/07/2016

(ii) consists of treating a cetacean killed, injured or taken in contravention of section 229, 229A, 229B or 229C;

(b) the person's action does not constitute an offence against section 229, 229A, 229B, 229C or 229D;

(c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 231 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 229, 229A, 229B, 229C or 229D.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 241 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

(a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or

(b) the action is in a class of actions:

(i) that are specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and

(ii) that the agreement or arrangement provides are to be notified to the Secretary by the agency.

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

Authorised Version C2016C00777 registered 12/07/2016

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
  (a) fails to do an act; and
  (b) the failing to do the act results in a contravention of subsection (2).

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

Subdivision E—Miscellaneous offences

236 Offences relating to foreign whaling vessels

(1) The master of a foreign whaling vessel commits an offence if the vessel is brought into a port in Australia or an external Territory and the master has not obtained the written permission of the Minister for the vessel to be brought into the port.

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

(2) Subsection (1) is an offence of strict liability.

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

(3) An offence against subsection (1) is punishable on conviction by a fine not exceeding 500 penalty units.

(4) Subsection (1) does not apply if:
  (a) the vessel is brought into the port in accordance with a prescribed agreement between Australia and any other country or countries; or
  (b) the vessel is brought into the port under the direction of a person exercising powers under a law of the Commonwealth or of a State; or
  (c) an unforeseen emergency renders it necessary to bring the vessel into the port in order to secure the safety of the vessel or human life.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

Authorised Version C2016C00777 registered 12/07/2016

(5) In this Act:

foreign whaling vessel means a vessel, other than an Australian vessel, designed, equipped or used for:

(a) killing, taking, treating or carrying cetaceans; or

(b) supporting the operations of a vessel or vessels designed, equipped or used for killing, taking, treating or carrying cetaceans.

master, in relation to a foreign whaling vessel, means the person (other than a ship's pilot) in charge or command of the vessel.

Subdivision F—Permit system

237 Application for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 238.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:

(a) details of the application; and

(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

238 Minister may issue permits

(1) Subject to subsections (3) to (4), the Minister may, on application by a person under section 237, issue a permit to the person.

Authorised Version C2016C00777 registered 12/07/2016

(2) A permit authorises its holder to take an action specified in the permit without breaching sections 229, 229A, 229B, 229C, 229D and 230.

(3) The Minister must not issue the permit unless satisfied that:

(a) the specified action will contribute significantly to the conservation of cetaceans; or

(b) if the specified action will interfere with cetaceans, the interference is incidental to, and not the purpose of, the taking of the action and:

(i) the taking of the action will not adversely affect the conservation status of a species of cetacean or a population of that species; and

(ii) the taking of the action is not inconsistent with a recovery plan or wildlife conservation plan that is in force for a species of cetacean; and

(iii) the holder of the permit will take all reasonable steps to minimise the interference with cetaceans; or

(c) the specified action is whale watching (other than whale watching covered by paragraph 231(aa)) and:

(i) the whale watching is carried out in accordance with the regulations (if any) made for the purposes of this section; or

(ii) the whale watching will not adversely affect the conservation status of a species of cetacean or a population of that species, and is not inconsistent with a recovery plan or wildlife conservation plan that is in force for a species of cetacean.

(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.

(3A) In making a decision on the application, the Minister must consider the comments (if any) received:

Authorised Version C2016C00777 registered 12/07/2016

(a) in response to the invitation under subsection 237(3) for anyone to give the Minister comments on whether the permit should be issued; and
(b) within the period specified in the invitation.

(4) The Minister must not grant a permit authorising its holder to kill a cetacean or to take a cetacean for live display.

(5) In this Act:

whale watching means any activity conducted for the purpose of observing a cetacean, including but not limited to being in the water for the purposes of observing or swimming with a cetacean, or otherwise interacting with a cetacean.

239 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The Minister may, in accordance with the regulations:
(a) vary or revoke a condition of a permit; or
(b) impose further conditions of a permit.

240 Contravening conditions of a permit

The holder of a permit commits an offence punishable upon conviction by a fine not exceeding 300 penalty units if:
(a) he or she does, or fails to do, an act or thing; and
(b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

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

241 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any

Authorised Version C2016C00777 registered 12/07/2016

action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:
  (a) the permit contains a condition permitting the holder to do so; and
  (b) the authority is given in accordance with any requirements set out in the condition.

(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

242 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

243 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:
  (a) suspend a permit for a specified period; or
  (b) cancel a permit.

Authorised Version C2016C00777 registered 12/07/2016

243A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Appeals Tribunal for review of a decision:
  (a) to issue or refuse a permit; or
  (b) to specify, vary or revoke a condition of a permit; or
  (c) to impose a further condition of a permit; or
  (d) to transfer or refuse to transfer a permit; or
  (e) to suspend or cancel a permit.

(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).

244 Fees

Such fees as are prescribed (if any) are payable in respect of the following:
  (a) the grant or the transfer of a permit;
  (b) the variation or revocation of a condition of a permit;
  (c) the imposition of a further condition of a permit.

Subdivision G—Miscellaneous

245 Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
  (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
  (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
  (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
    (i) made by a State or self-governing Territory; and
    (ii) in force under a law of the State or self-governing Territory; or

Authorised Version C2016C00777 registered 12/07/2016

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and

(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

246 Vesting of whales in Commonwealth

(1) If:

(a) a cetacean is:

(i) in the Australian Whale Sanctuary, other than the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force; or

(ii) in waters beyond the outer limits of the Australian Whale Sanctuary; and

Authorised Version C2016C00777 registered 12/07/2016

(a) a person kills, injures or takes the cetacean, whether or not in contravention of this Division;

the cetacean vests, by force of this section, in the Commonwealth.

(2) The Commonwealth is not liable in any action, suit or proceedings in respect of any matter relating to a cetacean at any time before the taking of possession of the cetacean by the Commonwealth.

247 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of cetaceans killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which cetaceans may be killed, taken or interfered with otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to cetaceans; and

(d) provide for the protection and conservation of cetaceans; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.

Authorised Version C2016C00777 registered 12/07/2016

Division 4—Listed marine species

Subdivision A—Listing

248 Listed marine species

(1) The Minister must, by legislative instrument, establish a list of marine species for the purposes of this Part.

(2) The list, as first established, must contain only the following:
- (a) all species in the Family Hydrophiidae (sea-snakes);
- (b) all species in the Family Laticaudidae (sea-snakes);
- (c) all species in the Family Otariidae (eared seals);
- (d) all species in the Family Phocidae ("true" seals);
- (e) all species in the Genus *Crocodylus* (crocodiles);
- (f) all species in the Genus *Dugong* (dugong);
- (g) all species in the Family Cheloniidae (marine turtles);
- (h) the species *Dermochelys coriacea* (leatherback turtles);
- (i) all species in the Family Syngnathidae (seahorses, sea-dragons and pipefish);
- (j) all species in the Family Solenostomidae (ghost pipefish);
- (k) all species in the Class Aves (birds) that occur naturally in Commonwealth marine areas.

(3) The Minister must establish the list within 30 days after the commencement of this Act.

(4) The Minister must cause a notice summarising the information contained in the instrument to be published in accordance with the regulations (if any).

249 Minister may amend list

(1) Subject to this Subdivision, the Minister may, by legislative instrument, amend the list by:
- (a) including or deleting items from the list; or

Authorised Version C2016C00777 registered 12/07/2016

(b) correcting an inaccuracy or updating the name of a marine species.

(2) Amendments of a list that delete items from the list take effect on the first day the amendments are no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.

(3) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (1)(b) of this section applies.

(4) When an instrument is laid before each House of the Parliament in accordance with Part 2 of Chapter 3 of the *Legislation Act 2003*, the Minister must cause a statement to be laid before each House with the instrument explaining:
(a) in the case of an item that has been included in the list by the instrument—why the item was so included; or
(b) in the case of an item that has been deleted from the list by the instrument—why the item was so deleted.

(5) The Minister must cause a notice summarising the information contained in an amendment under subsection (1) to be published in accordance with the regulations (if any).

250 Adding marine species to the list

(1) The Minister must not add a marine species to the list unless:
(a) the Minister is satisfied that it is necessary to include the species in the list in order to ensure the long-term conservation of the species; and
(b) the species occurs naturally in a Commonwealth marine area.

(2) Before adding a marine species to the list, the Minister must consult with each Minister who has an interest in a Commonwealth marine area where the species occurs naturally.

Authorised Version C2016C00777 registered 12/07/2016

251 Minister must consider advice from Scientific Committee

(1) In deciding whether to add an item to, or delete an item from, the list, the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the scientific aspects of the addition or deletion of the item concerned.

(2) The Minister must:

(a) decide whether to add an item to, or delete an item from, the list; and

(b) if the Minister decides to add or delete the item—amend the list accordingly under subsection 249(1);

within 90 days after receiving the Scientific Committee's advice on the addition or deletion of the item.

(3) A member of the Scientific Committee has a duty not to disclose to any other person the advice, or any information relating to the advice, before the end of that period of 90 days unless the disclosure:

(a) is for the official purposes of the Scientific Committee; or

(b) relates to an addition or deletion included in an amendment of the list that has already been registered as a legislative instrument under the *Legislation Act 2003*.

Note: Amendments of the list to add or delete an item are legislative instruments (see section 249).

252 Minister to make lists available to the public

The Minister must, in accordance with the regulations (if any), make copies of up-to-date lists available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

Authorised Version C2016C00777 registered 12/07/2016

Subdivision B—Permit system

253 Subdivision does not apply to members of certain species and cetaceans

This Subdivision does not apply to a member of a listed marine species that is a member of a listed migratory species, a member of a listed threatened species or a cetacean.

254 Killing or injuring member of listed marine species

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a species; and

(c) the member is a member of a listed marine species; and

(d) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

254A Strict liability for killing or injuring member of listed marine species

(1) A person commits an offence if:

(a) the person takes an action; and

Authorised Version C2016C00777 registered 12/07/2016

(b) the action results in the death or injury of a member of a marine species; and
(c) the member is a member of a listed marine species; and
(d) the member is in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—1,500 penalty units;
(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

254B Taking etc. member of listed marine species

(1) A person commits an offence if:
(a) the person takes, trades, keeps or moves a member of a species; and
(b) the member is a member of a listed marine species; and
(c) the member is in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

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

Authorised Version C2016C00777 registered 12/07/2016

254C Strict liability for taking etc. member of listed marine species

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a marine species; and

(b) the member is a member of a listed marine species; and

(c) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

254D Trading etc. member of listed marine species taken in Commonwealth area

(1) A person commits an offence if:

(a) the person trades, keeps or moves a member of a species; and

(b) the member is a member of a listed marine species; and

(c) the member has been taken in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

Authorised Version C2016C00777 registered 12/07/2016

(2) Strict liability applies to paragraphs (1)(b) and (c).

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

254E Strict liability for trading etc. member of listed marine species taken in Commonwealth area

(1) A person commits an offence if:

(a) the person trades, keeps or moves a member of a marine species; and

(b) the member is a member of a listed marine species; and

(c) the member has been taken in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

254F Aggravated offence—member of listed marine species that is a dugong or turtle

(1) For the purposes of this Subdivision, an offence against section 254, 254A, 254B, 254C, 254D or 254E (the ***underlying offence***) is an ***aggravated offence*** if the member to which the underlying offence relates is a member of a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are the listed marine species mentioned in paragraphs 248(2)(f), (g) and (h).

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

Authorised Version C2016C00777 registered 12/07/2016

(3) Strict liability applies to the physical element of circumstance, that the member is a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

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

255 Certain actions are not offences

Sections 254, 254A, 254B, 254C, 254D and 254E do not apply to:

(a) an action authorised by a permit that was issued under section 258 and is in force; or

(b) an action provided for by, and taken in accordance with, a wildlife conservation plan made under Division 5 and in force; or

(c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4); or

(d) an action that:

(i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4); and

(ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration; or

(da) an action that:

(i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4); and

(ii) is taken in accordance with the bioregional plan to which the declaration relates; or

Authorised Version C2016C00777 registered 12/07/2016

(db) in the case of sections 254B, 254C, 254D and 254E—an action that is trading, keeping or moving a member of a listed marine species, if:

(i) when the member of the species was taken, the species was not a listed marine species; and

(ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed marine species; or

(e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by an animal; or

(f) an action that is reasonably necessary to prevent a risk to human health; or

(g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

(j) an action taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 265; or

(l) an action, to the extent that it is covered by subsection 517A(7); or

(m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

Authorised Version C2016C00777 registered 12/07/2016

(i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and

(ii) is in force; or

(p) an action that is taken in accordance with a permit that:

(i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and

(ii) is in force; or

(q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (l), (m), (n), (o) or (p).

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

256 Failing to notify taking etc. of listed marine wildlife

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action either:

(i) results in the death or injury of a member of a listed marine species that is in or on a Commonwealth area; or

(ii) consists of, or involves, trading, taking, keeping or moving a member of a listed marine species that is in or on a Commonwealth area;

(b) the person's action does not constitute an offence against section 254, 254A, 254B, 254C, 254D or 254E, otherwise than because of paragraph 255(db);

(c) the person's action is not an action that the person was authorised by a permit to take.

Authorised Version C2016C00777 registered 12/07/2016

Note 1: Section 255 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 254, 254A, 254B, 254C, 254D or 254E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 261 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

(a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or

(b) the action is in a class of actions:

(i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and

(ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

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

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if a person:

(a) fails to do an act; and

(b) the failing to do the act results in a contravention of subsection (2).

Authorised Version C2016C00777 registered 12/07/2016

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

257 Application for permits

(1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 258.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:

(a) details of the application; and

(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

258 Minister may issue permits

(1) Subject to subsection (3), the Minister may, on application by a person under section 257, issue a permit to the person.

(2) A permit authorises its holder to take the actions specified in the permit without breaching section 254, 254A, 254B, 254C, 254D or 254E.

(3) The Minister must not issue the permit unless satisfied that:

(a) the specified action will significantly contribute to the conservation of the listed marine species concerned or other listed marine species; or

(b) the impact of the specified action on a member of the listed marine species concerned is incidental to, and not the purpose of, the taking of the action and:

Authorised Version C2016C00777 registered 12/07/2016

(i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and

(ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and

(iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or

(c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed marine species concerned; or

(d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed marine species concerned.

(4) In making a decision on the application, the Minister must consider the comments (if any) received:

(a) in response to the invitation under subsection 257(3) for anyone to give the Minister comments on whether the permit should be issued; and

(b) within the period specified in the invitation.

259 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The Minister may, in accordance with the regulations:

(a) vary or revoke a condition of a permit; or

(b) impose further conditions of a permit.

260 Contravening conditions of a permit

The holder of a permit commits an offence punishable upon conviction by a fine not exceeding 300 penalty units if:

(a) he or she does, or fails to do, an act or thing; and

Authorised Version C2016C00777 registered 12/07/2016

(b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

261 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:
   (a) the permit contains a condition permitting the holder to do so; and
   (b) the authority is given in accordance with any requirements set out in the condition.

(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

262 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

Authorised Version C2016C00777 registered 12/07/2016

263 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:

(a) suspend a permit for a specified period; or

(b) cancel a permit.

263A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Appeals Tribunal for review of a decision:

(a) to issue or refuse a permit; or

(b) to specify, vary or revoke a condition of a permit; or

(c) to impose a further condition of a permit; or

(d) to transfer or refuse to transfer a permit; or

(e) to suspend or cancel a permit.

(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).

264 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

(a) the grant or the transfer of a permit;

(b) the variation or revocation of a condition of a permit;

(c) the imposition of a further condition of a permit.

Subdivision C—Miscellaneous

265 Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:

(a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

Authorised Version C2016C00777 registered 12/07/2016

(b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or

(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:

(i) made by a State or self-governing Territory; and

(ii) in force under a law of the State or self-governing Territory; or

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of the fishing; and

(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

Authorised Version C2016C00777 registered 12/07/2016

266 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of members of listed marine species killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which members of listed marine species may be killed or taken otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to listed marine species; and

(d) provide for the protection and conservation of listed marine species; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.

Authorised Version C2016C00777 registered 12/07/2016