

1998

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**ENVIRONMENT PROTECTION AND BIODIVERSITY
CONSERVATION BILL**

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for the Environment and Heritage,
Senator the Hon Robert Hill)

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION BILL 1998

OUTLINE

The objects of this Bill are to:

- _ provide for the protection of the environment, especially those aspects of the environment which are matters of national environmental significance,
- _ promote ecologically sustainable development through the conservation and sustainable use of natural resources,
- _ promote the conservation of biodiversity,
- _ promote a co-operative approach to the protection and management of the environment involving governments, the community, and landholders, and
- _ assist in the co-operative implementation of Australia's international environmental responsibilities.

The Bill has 8 Chapters.

Chapter 1 is a preliminary Chapter.

Environmental assessments and approvals (Chapters 2 and 4)

The Bill applies to an action that has, will have, or is likely to have a significant impact on a matter of national environmental significance.

The matters of national environmental significance are:

- _ world heritage properties;
- _ Ramsar wetlands of international importance;
- _ nationally threatened species and communities,
- _ migratory species protected under international agreements;
- _ nuclear actions;
- _ the Commonwealth marine environment (generally outside 3 nautical miles from the coast); and
- _ any additional matter specified by regulation (after consultation with the States).

The Bill also applies to actions on Commonwealth land and actions by the Commonwealth and Commonwealth agencies ('Commonwealth actions').

Actions which have, may have or are likely to have a significant impact on a matter of national environmental significance may be taken:

- _ in accordance with a bilateral agreement (including an accredited State approval process) or a declaration (including an accredited Commonwealth approval process); or
- _ with the approval of the Minister under Part 9 of the Bill; or

_ in accordance with a conservation agreement.

In addition, actions taken in accordance with the *Great Barrier Reef Marine Park Act 1975*, or instruments under that Act, and forestry operations covered by the Regional Forest Agreements process do not need approval.

The Minister may also exempt specific actions on the basis of the national interest.

If the Minister provides advice that an action does not require approval, a person will not contravene the Bill if the action is taken in accordance with that advice.

For actions requiring approval, the environmental assessment and approval process is set out in Chapter 4.

If a person takes an action that requires approval without obtaining that approval, the person is liable to pay a civil penalty.

Bilateral agreements with States and Territories (Chapter 3)

The Minister may enter into bilateral agreements with States or Territories. Bilateral agreements are an integral feature of the Bill. Through bilateral agreements, the Commonwealth may accredit and rely upon State assessment and approval processes for actions impacting upon matters of national environmental significance.

A bilateral agreement may declare that actions in a specified class do not require approval under the Bill if they are approved by the State in a particular manner or if they are taken in a specified manner. Actions covered by a bilateral agreement do not require approval under the Bill.

Bilateral agreements must be consistent with the objects of the Bill and must meet any standards or criteria identified in regulations. In this way, the Commonwealth can be satisfied that accredited State processes meet appropriate standards.

The Commonwealth may cancel or suspend bilateral agreements in certain circumstances.

Other Commonwealth processes may be similarly accredited under declarations.

Listed species and communities (Chapter 5, Part 16)

The Bill provides for the establishment of lists of:

- _ nationally threatened native species (classified as extinct, extinct in the wild, critically endangered, endangered, vulnerable, and conservation);
- _ nationally threatened ecological communities (which may be classified as critically endangered, endangered or vulnerable);
- _ key threatening processes;
- _ internationally protected migratory species; and
- _ marine species (in Commonwealth waters).

The Bill:

- _ creates the Australian Whale Sanctuary;
- _ regulates certain activities in Commonwealth areas which affect whales and dolphins, listed species and listed ecological communities

The Minister is required to:

- _ prepare recovery plans for listed threatened species (except those listed as extinct or conservation dependent) and listed threatened communities, and
- _ prepare threat abatement plans for listed key threatening processes.

The Minister may make wildlife conservation plans for the protection, conservation, and management of listed migratory species, listed marine species, and cetaceans.

Protected areas (Chapter 5, Part 20)

Protected areas are:

- _ World Heritage Properties,
- _ Wetlands of international importance,
- _ Biosphere reserves, and
- _ Commonwealth reserves.

The Bill sets out some steps to be followed before a property can be nominated as a world heritage property or designated as a Ramsar wetland, including consultation with relevant States and persons. The Bill promotes the preparation of management plans for these areas by the Commonwealth and the States.

The Bill sets out some requirements for creating and managing Commonwealth reserves (only on land owned by the Commonwealth). These include requirements for the preparation of management plans and the involvement of indigenous people in reserves which include indigenous people's land.

Conservation agreements with persons (Chapter 5, Part 17)

The Minister for the Environment may enter into Conservation agreements with private landholders. Under conservation agreements, land is managed in an agreed manner to enhance conservation, and the Commonwealth may provide financial or other assistance. Conservation agreements must result in a net benefit to the conservation of biodiversity in the place covered by the agreement. A conservation agreement may specify actions that are exempt from Commonwealth environmental assessment and approval.

Access to biological resources (Chapter 5, Part 16, Division 6)

The Bill enables the Government to establish regulations about access to biological resources on Commonwealth land and waters.

Acts replaced

The Bill replaces the *National Parks and Wildlife Conservation Act 1975*, the *Whale Protection Act 1980*, the *World Heritage (Properties Conservation) Act 1983*, the *Endangered Species Protection Act 1992*, and the *Environment Protection (Impact of Proposals) Act 1974*.

FINANCIAL IMPACT STATEMENT

The Environment Protection and Biodiversity Conservation Bill 1998 will not cost the Commonwealth more than the existing legislative arrangements which it will replace.

REGULATION IMPACT STATEMENT FOR THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION BILL 1998.

PROBLEM

Market failure

Many of the benefits provided by the environment are used free of charge, and often access cannot be denied. Without government involvement, free access and use can result in adverse effects on the environment.

Any use of environmental resources may involve some loss of environmental quality. If the users of environmental resources do not pay for the use of those resources, or are not otherwise made responsible, the resources will be

used excessively, and impose losses not only on those currently alive, but also on those yet to be born. Governments can intervene to correct this failure.

In Australia, over the years, State and Commonwealth Governments have put in place policies to encourage better use of environmental resources, and backed these with legislation and regulation. This was often done in an ad hoc fashion, as problems arose, without a clear understanding of which level of Government was best placed to address damage to the environment. Consequently, this proposal concerns improving government processes and environmental outcomes.

What is the problem being addressed?

On taking office the Howard Government was faced with a division of responsibilities between the Commonwealth, States and Territories, together with a series of governmental environmental processes which were in need of reform. The reforms were necessary to remove unnecessary impediments to business/industry and to improve the effectiveness of environmental protection measures were not optimally effective. The Government also inherited an environmental law regime which:

- **developed in an ad hoc and piecemeal fashion.**
 - Accordingly, the various Acts are not integrated within an appropriate conceptual framework. This limits the ability of the existing legislation to secure good environmental outcomes in an efficient manner.
- **does not reflect an appropriate role for the Commonwealth in environmental matters.**
 - In some cases, the Commonwealth does not currently have adequate legislative capacity to discharge its responsibilities for national environmental matters. In other cases, Commonwealth environmental legislation is triggered by matters which are more appropriately the responsibility of local or State governments.
- **was enacted at a time when most States did not have any significant environmental legislation.**
 - However, most States have now enacted relatively comprehensive environmental law regimes. In fact, some States have recently enacted their second or third generation of environmental statutes. The evolution of State law has not been adequately recognised in the Commonwealth's legislative framework, thus hindering seamless and productive integration of Commonwealth and State laws.
- **largely fails to recognise and implement the principles of ecologically sustainable development.**
 - The principles of ecologically sustainable development are now universally accepted as the basis upon which environmental, economic

and social goals should be integrated in the development process. The failure to fully recognise and implement the principles of ecologically sustainable development is regarded as a fundamental deficiency in the Commonwealth's existing regime.

- **Does not adequately equip the Commonwealth to address current and emerging environmental issues. It has not been amended to reflect best practice.**

Why is government action needed to correct the problem?

Government action was clearly the only way to address problems associated with intergovernmental relations on the environment. It was through the 1992 Intergovernmental Agreement on the Environment (IGAE) that governments established a framework for intergovernmental consultation, and provided mechanisms to accommodate each other's interests on particular matters. The IGAE also established the responsibilities and interests of governments for environment matters.

It was also necessary for the Government to take action to reform its environmental legislation.

OBJECTIVES

What are the objectives of the review processes?

The aim of the Government's action was to more effectively implement the IGAE, put in place Commonwealth environmental law which operates more effectively and efficiently, and, most importantly, deliver better environmental outcomes.

To address the problems the Government took action on two fronts.

Through the Council of Australian Governments (COAG) it instigated a Review of Commonwealth/State Roles and Responsibilities for the Environment. The objective of the review was

To develop a more effective framework for inter-governmental relations on the environment which will provide greater certainty for participants in environment issues, minimise duplication of effort to achieve common goals and facilitate improved environmental outcomes.

Legislation reform was an essential part of the COAG Agreement. Therefore, following on from the COAG Review, the Government embarked on a Review of Commonwealth Environmental Legislation, with the objective of reforming the legislation to

deliver better environmental outcomes in a manner that promotes certainty for all stakeholders and minimises the potential for delay and inter-governmental duplication.

Both the Reviews are an integral part of the Government's Commonwealth/State reform agenda. A priority of the Review of Commonwealth Environmental Legislation is to implement the outcomes of the COAG Review of Commonwealth/State Roles and Responsibilities for the Environment.

COAG Review process

The Review of Commonwealth/State Roles and Responsibilities for the Environment was conducted by a senior level Working Group of the Intergovernmental Committee for Ecologically Sustainable Development

In November 1996 the Government endorsed the objectives and approaches pursued by the Commonwealth in the Review. In September 1997 the Government agreed its position for both the final negotiations and the COAG meeting which considered the reforms resulting from the Review. The Government also noted that amendments to Commonwealth environment legislation will be required to implement the outcomes of the COAG Review, to proceed immediately after the Review had been concluded.

In November 1997 COAG gave in-principle endorsement to a Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment. Fundamental changes to Commonwealth Environmental Legislation are required to give effect to the Agreement. A majority of States and Territories have now signed the agreement, and it is a Government priority to introduce legislation into Parliament to implement to agreement. There is an expectation, particularly on the part of business and industry, that the Government will introduce legislation quickly to provide certainty of outcome for the review process and deliver its benefits to the community.

Objectives of the Bill flowing from the COAG review

In summary, the major outcomes of the Review process to be reflected in the *Environment Protection and Biodiversity Conservation Bill 1998* are:

- The Commonwealth focussing on matters of national environmental significance. This will result in the Commonwealth not being involved in matters of only State or local significance.
- That for activities or proposals involving both the Commonwealth and a State, the Commonwealth environmental assessment and approval process will be triggered only by those actions which may have a

significant impact on matters of national environmental significance. This will overcome the problem of Commonwealth legislation being triggered in an indirect manner by Commonwealth decisions that are not directly related to the environment, such as export approval and foreign investment, and funding decisions.

- Improving the efficiency and timeliness of environmental and development approvals processes;
- Greater transparency and certainty in decision making in relation to development proposals;
- A reliance on State processes and management approaches which will, as appropriate, accommodate Commonwealth interests;
- Recognition of the Commonwealth's role in international and national environmental matters with strengthened Commonwealth/State partnership arrangements for dealing with these matters;

Is there a regulation/policy currently in place? Who administers it?

Pieces of legislation which the Bill is designed to replace are:

- _ the *Environment Protection (Impact of Proposals) Act 1974*,
- _ the *National Parks and Wildlife Conservation Act 1975*,
- _ the *Whale Protection Act 1980*,
- _ the *World Heritage (Properties Conservation) Act 1983*, and
- _ the *Endangered Species Protection Act 1992*.

These Acts are administered by the Department of the Environment.

The Government committed itself to reform environmental legislation in the 1996 pre-election environment policy statement, *Saving Our Natural Heritage*, and the 1996 Budget statement, *Investing in Our Natural Heritage*.

OPTIONS

In light of the COAG Agreement, the only options available to the Government were to continue with the existing Commonwealth/State regime and environmental legislation, or to implement the Agreement through the reform of Commonwealth environmental legislation.

Option 1: Status quo

The current Commonwealth-State environmental arrangement and Commonwealth regulatory regime involves:

- _ Commonwealth environmental assessments and approvals being activated by *ad hoc* triggers that are not directly related to the environment (eg: foreign investment).
- _ No clear timeframes for Commonwealth environmental assessments and approvals.
- _ Commonwealth environmental assessments and approval being triggered at any stage of the development process.
- _ Proponents (ie those taking or proposing to take an action which may require assessment under the act) having no certainty about whether Commonwealth processes will be triggered by their activities and/or proposals.
- _ Procedures for accrediting State processes and decisions with no legislative basis.
- _ The Commonwealth's environmental statutes largely fail to recognise and implement the principles of ecologically sustainable development.
- _ Overall, the Commonwealth's environmental law regime has not been amended to reflect best practice. For example, in the conservation field, it primarily focuses on first generation issues, such as national park management, and has not evolved to embrace contemporary approaches to biodiversity conservation.

Option 2: Reform of Commonwealth environmental legislation

Reform of Commonwealth environmental legislation is to be achieved through the *Environment Protection and Biodiversity Conservation Bill 1998*. A particular focus of the Bill is to implement the outcomes of the COAG Agreement. Consideration was given to enacting these provisions in two separate Bills. However, incorporating the provisions in a single Bill has advantages in terms of administrative convenience and because of the links between Environment Protection and Biodiversity Conservation. Using a single Bill has no impact on the actual provisions contained in the Bill, except to prevent repetition.

Features of the Bill are:

- _ Commonwealth involvement in the environmental assessment and approval process is focussed on matters of national environmental significance.

- _ Promotion of ecologically sustainable development.
- _ Proponents will be able to initiate the triggering process in the Act.
- _ Decisions on Commonwealth involvement will be made early in the process and will be binding.
- _ A transparent legislative mechanism for accreditation of State assessment processes and, in some cases, State decisions will be adopted. The goal will be to maximise reliance on State processes which meet appropriate standards. Bilateral agreements will provide for Commonwealth accreditation of State processes and, in appropriate cases, State decisions (for example, decisions under agreed management plans). Accordingly, bilateral agreements will allow the Commonwealth to accredit State systems which meet specified criteria. The Bill contains provisions to ensure that the level of protection afforded by State processes must be at least equivalent to that provided by Commonwealth processes.
- _ The Environment Minister to decide whether to grant consent after full consultation with other relevant Ministers. The decision will be made on the basis of an ecologically sustainable development approach which includes consideration of economic and social factors.
- _ An improved, integrated framework for the conservation and use of Australia's biodiversity so that conservation priorities can be determined in a more systematic and strategic manner, and regional approaches to biodiversity conservation promoted.
- _ Promotion of the identification and monitoring of Australia's biodiversity and bioregional planning;
- _ Ensuring that the Commonwealth's protected area system covers the full range of IUCN categories from strict nature conservation to multiple use;
- _ Recognising that the matters of national environmental significance which trigger the assessment and approval process in the Environment Protection Act include World Heritage Properties, Ramsar wetlands, nationally endangered and vulnerable species and endangered ecological communities, and migratory species;
- _ Providing for conservation agreements to protect biodiversity on private and public land; and

IMPACT ANALYSIS

The regulations will affect government, business, and the community to varying degrees. The most significant regulatory impacts arise from changes to the environmental assessment and approvals regime.

Following is a comparison between the two options, with respect to environmental assessment and approvals.

Status quo

Commonwealth legislation can be triggered by projects which have only local or State significance.

It can be several months before a project is referred to the Commonwealth Environment Minister, creating unnecessary delays.

Indirect triggers (eg foreign investment approval) may occur late in the project development process. This creates additional delay and hinders seamless integration of Commonwealth and State assessment and approval processes.

Proponents may be uncertain about whether any trigger for Commonwealth involvement will occur.

Ad hoc triggers mean that two projects can raise identical environmental issues, with only one triggering

Reform of Commonwealth Environmental Legislation

Commonwealth legislation will be triggered only by projects which may have a significant impact on matters of national environmental significance, and also by projects on Commonwealth land, or by Commonwealth actions.

The proponent may trigger the process as early as convenient.

Reliance on direct environmental triggers eliminates the potential for late triggers.

Proponents will know up-front whether the Commonwealth is involved in the environmental assessment and approval process.

Environmentally-based triggers mean that two projects raising identical environmental issues will either both

Commonwealth involvement.	trigger or both fail to trigger Commonwealth processes.
Different action Ministers may reach different decisions about whether a project trigger Commonwealth processes.	There is one, early, binding decision on whether Commonwealth processes are triggered.
Up-front accreditation of State processes, assessments and decisions is not possible.	Up-front accreditation of State processes, assessments and decisions is provided for.
Time-frames for Commonwealth environmental assessment and approval processes are not adequately set out.	Time-frames for Commonwealth environmental assessment and approval processes are fully specified, increasing clarity of the process for proponents.
The Commonwealth assesses all environmental issues raised by a project.	Only matters of national environmental significance will be assessed by the Commonwealth for projects occurring outside Commonwealth land.

More focussed Commonwealth involvement in environmental issues based on matters of national environmental significance will lead to better use of Commonwealth resources and improved environmental outcomes.

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

The main parties affected by the problem and its proposed solutions are the Commonwealth, States and Territories, and industry.

The community will also be affected by changes in the management of the environment to the extent that these are manifested in environmental outcomes.

**Identify and categorise the expected impacts of the proposed options as likely benefits, or likely costs
Determine which groups are likely to experience these benefits and costs.**

Option 1: Status quo

Benefits

The only significant benefit to the Commonwealth, States and industry from continuing with the status quo is that it will not be necessary to revise current procedures, thus saving some minor one off costs.

The community will continue to benefit from the same level of environmental protection and biodiversity conservation that they presently enjoy.

Costs

The main costs to the Commonwealth are:

- _ unnecessary duplication of State assessment and approval processes will continue,
- _ the Commonwealth will continue to assess matters that are of State and local significance only, and
- _ some proposals affecting matters of genuine national environmental significance will continue to escape Commonwealth assessment and approval.

The main costs to the States arise from:

- _ continuing unnecessary duplication of Commonwealth assessment and approval processes,
- _ uncertainty about whether and when the Commonwealth will become involved in environmental assessment and approval.

The main costs to industry are:

- _ some proposals will continue to be unnecessarily subject to both Commonwealth and State assessment and approvals,
- _ uncertainty about whether Commonwealth assessment and approval processes are triggered, and associated delays in assessment, will continue, and
- _ delays because Commonwealth assessment and approval processes are triggered late in the development process will continue.

Option 2: Reform of Commonwealth environmental legislation

Benefits

The main benefits to the Commonwealth are:

- _ improved efficiency and transparency in decision making on environmental matters involving the Commonwealth and the States,

- _ more focussed Commonwealth involvement in environmental issues based on matters of national environmental significance, which will lead to better use of Commonwealth resources and improved environmental outcomes,
- _ the removal of unnecessary duplication of environmental assessment and approval processes through the framework for accreditation of State processes and decisions,
- _ Commonwealth level of involvement determined early in an assessment and approvals process,
- _ removal of action based triggers will remove the obligation (and costs) of Commonwealth Ministers and Departments requiring environment impact assessment for matters that are of State or local significance only,
- _ opportunities for coordinating and streamlining Commonwealth decision making on environmental matters involving the States,
- _ clear Commonwealth role on environmental matters and clear arrangements for determining whether matters of national environmental significance exist,
- _ the total cost of assessments and approvals processes to the Government sector will be reduced, because duplications and inefficiencies are being eliminated, particularly through accreditation and bilateral agreements,
- _ capacity that the Commonwealth and the States can agree on additional matters of national environmental significance,
- _ the use of bilateral agreements, conservation agreements and other instruments will encourage a focus on long-term planning and monitoring, and
- _ a simpler, more flexible legislative basis for promoting the conservation and sustainable use of biodiversity.

The main benefits to States are:

- _ recognition that environmental matters of State or local significance will be dealt with by the States together with greater certainty of Commonwealth responsibilities and involvement in environment issues based on matters of national environmental significance,
- _ Commonwealth will no longer be involved in matters that are of only state or local significance,
- _ improved efficiency and transparency in decision making on environmental matters involving the Commonwealth and the States with mechanisms that involve the States in decision making,
- _ clear arrangements for determining whether matters of national environmental significance exist,
- _ capacity that the Commonwealth and the States can agree on additional matters of national environmental significance, and
- _ removal of unnecessary duplication of Commonwealth environmental assessment and approval processes through streamlined accreditation arrangements.

The main benefits to industry are:

- _ greater certainty of Commonwealth and State roles, responsibilities and processes relating to the environment, particularly Commonwealth involvement in environmental issues,
- _ simplified and clearer framework in which industry can pursue proposals requiring environmental and development approval,
- _ a framework for improved accreditation arrangements whereby only one government environmental assessment and approval process will be applied to an activity or proposal - the government best placed to undertake an assessment will do so with unnecessary duplication removed,
- _ a framework for integrated Commonwealth and State processes and improved public interfaces for dealing with activities and proposals involving matters of national environmental significance,
- _ environmental and development approvals that are not of national environmental significance will be considered in accordance with State environmental and planning processes,
- _ the delay, uncertainty and inefficiency associated with indirect triggers for Commonwealth assessments will be eliminated,
- _ the legislation will require an early, binding decision by the Commonwealth on whether its assessment process will apply,
- _ there will be set timeframes within which decisions must be made,
- _ the increased use of voluntary conservation agreements, which allow a flexible approach to conserving biodiversity on private land, and
- _ enforcement and compliance provisions which are consistent with the criminal code, and thus offer greater certainty and internal consistency.

The main benefits to the community are:

- _ enhanced protection of the environment, with potential benefits such as better health outcomes,
- _ enhanced conservation of biodiversity leading to more resilient ecosystems, and greater environmental amenity, and
- _ while the Bill retains current opportunities for community input to environmental assessments and approvals, earlier triggering and more certain process with explicit timelines will ensure that community comment is considered earlier in the development process, and is therefore more effective. Decisions will continue to be transparent, and information will continue to be available to the public.

Costs

There will be minor one-off costs to the Commonwealth, States, and industry associated with revising procedures for environmental assessments and approvals. Most of these costs will be borne by Government, and will arise from the need to revise regulations and procedures, and negotiate and

implement bilateral agreements. Costs to industry will result from the need to become familiar with the new procedures and train staff to comply with them. While it is not possible to quantify one-off costs, they should be small compared to the ongoing benefits of more streamlined and efficient processes.

While total costs will be reduced, the savings for specific jurisdictions cannot be predicted until such accreditation arrangements and agreements are in place.

CONSULTATION

The Review of Commonwealth-State Roles and Responsibilities for the Environment involved extensive consultation between the Commonwealth, States, Territories, and the Australian Local Government Association. The Review also involved consultation with relevant Ministerial Councils and non-government organisations. In December 1996 the views of key non-government organisations on a consultation paper were sought. Submissions from these organisations were considered by the senior level Working Group conducting the review, which also held discussions with representatives of key community organisations.

Consultation on the reform of Commonwealth environment legislation was primarily through 5000 copies of a consultation paper, which was distributed to all interested government and non-government organisations. The consultation paper was also made available electronically on the internet. Submissions on the paper were invited, and considered in the development of the Bill. Both the Minister and officials held discussion with key interests.

Who are the main affected parties? What are the views of those parties?

The main affected parties and their views are:

Government

All States and Territories endorsed in principle the COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment. The Agreement has now been signed by most States and Territories.

Industry

Industry generally support the substance of the proposed reforms, particularly the clarification of Commonwealth and State roles and responsibilities, the efficiencies that will be gained through the streamlining of the environmental assessment and approvals processes, and the simplification of the regulatory regime. Industry notes that the precise benefits of the reforms will, to some extent, depend upon implementation of

accreditation arrangements and bilateral agreements between the Commonwealth and individual States and Territories.

Conservation organisations

Conservation groups are concerned that accreditation of State and Territory processes may reduce the overall level of protection for the environment. There is also concern that approaches such as the use of bilateral agreements should be transparent, and provide scope for public involvement. A number of conservation organisations believe that a wider range of national environmental significance matters should be triggers for environmental assessment and approvals (eg greenhouse, vegetation clearance). Conservation organisations generally support the suggested reforms relating to an integrated approach to the conservation of biodiversity.

CONCLUSION AND RECOMMENDED OPTION

The package of measures contained in the Bill is the preferred option because they:

- implement the Heads of Agreement on Commonwealth/State Roles and Responsibility for the Environment,
- focus Commonwealth involvement in the environment on matters of national environmental significance and eliminate the need for Commonwealth involvement in matters which have only State or local significance,
- will deliver significant ongoing benefits to the Commonwealth, States and Territories, and industry, particularly in terms of more streamlined and efficient environmental assessment and approvals processes,
- will result in an effective and efficient environmental law regime, which will deliver better environmental outcomes in a manner that promotes certainty for all stakeholders, and
- will result in enhanced protection for the environment, and enhanced conservation of Australia's biodiversity.

IMPLEMENTATION AND REVIEW

How will the preferred option be implemented?

The option will be implemented through the operation of the legislation. This will involve developing bilateral agreements and accreditation arrangements.

The Act established by this Bill will be administered by existing Commonwealth Agencies. The Act would be administered by the Department of the Environment.

Many of the regulatory instruments contained within the Bill will have a limited life time, and be subject to regular evaluation and review of their operation and effectiveness.

The following Acts will be repealed: *National Parks and Wildlife Conservation Act 1975*, the *Whale Protection Act 1980*, the *World Heritage (Properties Conservation) Act 1983*, the *Endangered Species Protection Act 1992*, and the *Environment Protection (Impact of Proposals) Act 1974*.

Is the preferred option clear, consistent, comprehensible and accessible to users?

Environment assessment and approval procedures will be simplified and streamlined. Circumstances under which Commonwealth processes are triggered will be much clearer than at present, and clear timelines will be set out.

Consultation with business/industry demonstrates a high level of support for, and understanding of, the proposed changes.

What is the impact on business, including small business, and how will compliance and paper burden costs be minimised?

The Bill implements relevant commitments to streamline government processes contained in the Government statement *More Time for Business*. In particular, the mutual recognition and accreditation procedures established by the IGAE are further developed and accelerated.

Continuing compliance costs will be negative (ie the changes are beneficial) due to the increased certainty and efficiency of the environmental assessment and approvals process, as outlined above.

There is likely to be some one-off compliance cost for business and conservation non-government organisations in adjusting to the new regulatory regime initiated by this Bill. It will be necessary for organisations to familiarise themselves with the new provisions and their implication

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CONSERVATION BILL 1998**

NOTES ON CLAUSES

Chapter 1 - Preliminary

Part 1 - Preliminary

Clause 1 - Short title

- 1 This clause provides for the Act to be cited as the *Environment Protection and Biodiversity Conservation Act 1998*.

Clause 2 - Commencement

- 2 This clause provides that the Act will commence on a day to be fixed by proclamation, but not more than six months after receiving Royal Assent

Clause 3 - Object

- 3 This clause sets out the object of the Act.

Clause 4 - Act to bind Crown

- 4 This clause provides that the Act shall bind the Crown in each of its capacities. The Crown is not liable to be prosecuted for an offence.

Clause 5 - Application of the Act

- 5 Except where the contrary intention appears, the Act applies only to acts, omissions, matters and things within the Australian jurisdiction (defined in subclause 5(5)). In the Australian jurisdiction, the Act applies to everyone. Where the Act applies outside the Australian jurisdiction, it applies only to Australian citizens and certain other persons domiciled in Australia, Australian corporations, Australian aircraft, Australian vessels, Commonwealth agencies and the Commonwealth.

Clause 6 - Act to have effect subject to Australia's international obligations

- 6 This clause provides that the Act has effect subject to Australia's international obligations.

Clause 7 - Application of the criminal code

- 7 This clause provides that Chapter 2 of the Criminal Code applies to all offences against the Act.

Clause 8 - Native title rights not affected

- 8 This clause provides that the Act does not affect the operation of section 211 of the *Native Title Act 1993*, which provides that holders of native title rights covering certain activities do not need authorisation required by other laws (including this Act) to engage in those activities.

Clause 9 - Relationship with other Acts

- 9 The Act does not affect the operation of the *Airports Act 1996*. In particular, it is intended to operate concurrently with the scheme for environmental regulation established under that Act and the regulations under that Act.

- 10 To avoid doubt, subclause 9(2) preserves the operation of subsection 7(1) of the *Antarctic Treaty (Environment Protection Act) 1980*. This is intended to ensure that persons do not need approval or a permit under this Act for actions authorised by a permit or authority granted by another party to the Antarctic Treaty (except as provided for in regulations under the *Antarctic Treaty (Environment Protection Act) 1980*).
- 11 Clause 9 also provides that making a decision or giving an approval under this Act shall not trigger section 30 of the *Australian Heritage Commission Act 1975*.

Clause 10 - Relationship with State law

- 12 Except where a contrary intention appears, the Act is not intended to exclude or limit the operation of any State or Territory law providing for the protection of the environment. The scheme established by this Act is intended to complement State and Territory environment laws and, through bilateral agreements and other means, provide for the integration of Commonwealth and State regimes.

Chapter 2 - Protecting the environment

Part 2 - Simplified outline of this Chapter

Clause 11 Simplified outline of this Chapter

- 13 This clause gives a simplified outline of the chapter.

Part 3 - Requirements for environmental approvals

Division 1

- 14 This Division applies to an action that has, will have, or is likely to have a significant impact on one or more of the matters of national environmental significance. The matters of national environmental significance are:
- world heritage properties;
 - Ramsar wetlands of international importance;
 - nationally threatened species and communities,
 - migratory species protected under international agreements;
 - nuclear actions;
 - the Commonwealth marine environment (generally outside 3 nautical miles from the coast); and
 - any additional matters specified by regulation (any such matters can only be added after consultation with the States).

- 15 Actions which have, may have or are likely to have a relevant impact on a matter of national environmental significance may be taken only:
 - in accordance with a bilateral agreement (which may accredit a State approval process) or a declaration (which may accredit another Commonwealth approval process); or
 - with the approval of the Minister under Part 9 of the Act; or
 - in some cases, in accordance with a conservation agreement.
- 16 In addition, actions taken in accordance with the *Great Barrier Reef Marine Park Act 1975*, or instruments under that Act, and forestry operations covered by the Regional Forest Agreements process do not need approval.
- 17 The Minister may also exempt specific actions on the basis of the national interest.
- 18 If the Minister provides advice that an action does not require approval, a person will not contravene the Act if the action is taken in accordance with that advice.
- 19 For actions requiring approval, the environmental assessment and approval process is set out in Chapter 4.
- 20 If a person takes an action that requires approval without obtaining that approval, the person is liable to pay a civil penalty.

Subdivision A - World Heritage

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

- 21 This clause provides that a person must not take an action that has, will have, or is likely to have a significant impact on the world heritage values of a declared World Heritage property except:
 - where a person has obtained approval from the Minister for the taking of the action for the purposes of this clause; or
 - where a bilateral agreement provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited State approval process); or
 - where a declaration provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited Commonwealth approval process); or
 - where a conservation agreement provides that the action does not require approval.

- 22 In addition, actions taken in accordance with the *Great Barrier Reef Marine Park Act 1975*, or instruments under that Act, and certain forestry operations covered by the Regional Forest Agreements process do not need approval.
- 23 Not all actions impacting on a world heritage property will have, or are likely to have, a *significant impact* on the *world heritage values* of that property. This clause therefore does not regulate all actions affecting a world heritage property. In order to discharge Australia's responsibilities under the World Heritage Convention, this clause regulates those activities that will, or are likely to, have a significant impact on the values which give the property its world heritage status.
- 24 The Minister will issue administrative guidelines to provide guidance on determining whether an action has, will have or is likely to have a significant impact on the world heritage values of a world heritage property. These guidelines will also identify relevant bilateral agreements (including accredited State approval processes) and relevant declarations (including accredited Commonwealth processes), compliance with which will obviate the need for approval.
- 25 If it is unclear whether an action requires approval, the person proposing to take the action can refer the action to the Minister for a decision on whether approval is required (clause 68). If the Minister provides advice that an action does not require approval (clause 75), a person will not contravene this clause if the action is taken in accordance with that advice (para 12(2)(c)). The Minister must provide advice within twenty days of receiving the referral (clause 75).
- 26 This clause provides for a civil penalty of up to 5,000 penalty units for an individual or up to 50,000 penalty units for a body corporate.

Clause 13

- 27 This clause stipulates that a property is a declared World Heritage property if:
- it is included in the World Heritage List under the World Heritage Convention; or
 - it is specified in a declaration made by the Minister under clause 14.

Clause 14

- 28 The Minister may declare a specified property to be a declared world heritage property if:
- the Commonwealth has nominated the property for listing under the World Heritage Convention; or
 - the Minister is satisfied that the property has, or is likely to have, world heritage values and some or all of the values are under threat.
- 29 The appropriate Minister of the relevant State or Territory must be consulted before a declaration is made, except where the threat to a property is imminent.
- 30 The Minister must specify a period for which the decision is to be in force. The period must not be longer than the Minister believes:
- the World Heritage committee needs to decide whether to include a nominated property in the List; or
 - the Commonwealth needs to decide whether the property has world heritage values and whether to nominate the property.
- 31 The period of a declaration is limited in this way to ensure the Act does not apply to properties which are not of world heritage value or which the Commonwealth is not genuinely assessing for possible nomination. Prior to nomination, declarations would only be used as a mechanism of last resort and only then to deal with significant threats to some or all of the world heritage values of a property.
- 32 In particular, the purpose of clauses 13 and 14 is to ensure the Commonwealth can discharge Australia's obligations under the World Heritage Convention by providing for the identification and protection of a property which has world heritage values but which is not yet listed.
- 33 A property may be nominated for listing under the World Heritage Convention only if the Commonwealth has sought to reach agreement with the owner or occupier of an area that is part of the property and the relevant State or Territory (clause 314).

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

- 34 This clause specifies circumstances under which the Minister must revoke or amend a declaration under clause 14. A declaration must be revoked or amended so that it does not specify a property that is withdrawn from a nomination or, in relation to properties that have not been nominated at the time of the declaration, which the Commonwealth has decided not to nominate or which the Minister believes either does not have world heritage values or those values are not under threat.

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

- 35 This clause provides that a person must not take an action that has, will have, or is likely to have a significant impact on the ecological character of a declared Ramsar wetland except:
- where a person has obtained approval from the Minister for the taking of the action for the purposes of this clause; or
 - where a bilateral agreement provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited State approval process); or
 - where a declaration provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited Commonwealth approval process); or
 - where a conservation agreement provides that the action does not require approval.
- 36 In addition, actions taken in accordance with the *Great Barrier Reef Marine Park Act 1975*, or instruments under that Act, and certain forestry operations covered by the Regional Forest Agreements process do not need approval.
- 37 Not all actions impacting on a Ramsar wetland will have, or are likely to have, a *significant impact* on the *ecological character* of that wetland. This clause therefore does not regulate all actions affecting a Ramsar wetland. In order to discharge Australia's responsibilities under the Ramsar Convention, this clause regulates those activities that will, or are likely to, have a significant impact on the ecological character of a wetland - that is, those values of the wetland that make it a wetland of international importance.
- 38 The Minister will issue administrative guidelines to provide guidance on determining whether an action has, will have or is likely to have a significant impact on the ecological character of a Ramsar wetland. These guidelines will also identify relevant bilateral agreements (including accredited State approval processes) and relevant declarations (including accredited Commonwealth processes), compliance with which will obviate the need for approval.
- 39 If it is unclear whether an action requires approval, the person proposing to take the action can refer the action to the Minister for a decision on whether approval is required (clause 68). If the Minister provides advice that an action does not require approval (clause 75), a person will not contravene this clause if the action is taken in accordance with that advice (para 12(2)c). The Minister must provide advice within twenty days of receiving the referral (clause 75).

40 This clause provides for a civil penalty of up to 5,000 penalty units for an individual or up to 50,000 penalty units for a body corporate.

Clause 17 - What is a *declared Ramsar wetland*?

41 This clause stipulates that a wetland, or part of a wetland, is a declared Ramsar wetland if it is either:

- designated by the Commonwealth under Article 2 of the Ramsar Convention and not excluded or delete in accordance with the Convention; or
- declared by the Minister to be a declared Ramsar wetland.

42 A wetland may be declared to be a declared Ramsar wetland prior to designation under the Convention only if the Minister is satisfied that the wetland is, or is likely to be, of international significance and the ecological character of the wetland is under threat.

43 The purpose of allowing the Minister to declare a wetland (or part of a wetland) to be a declared Ramsar wetland is to ensure that the Commonwealth can discharge Australia's obligations under the Convention in relation to wetlands that are, or are likely to be, of international importance but which have not yet been designated under Article 2 of the Ramsar Convention. The clause provides that declarations must be for a specified period no longer than the Minister believes will be required to evaluate the wetland's international importance and, if appropriate, designate the wetland under Article 2 of the Ramsar Convention.

44 The Minister must revoke a declaration if satisfied that the wetland is not of international importance or if it is no longer under threat.

45 A wetland may be designated under the Ramsar Convention only if the Commonwealth has sought to reach agreement with the owner or occupier of an area that is part of the wetland and the relevant State or Territory (clause 326).

Subdivision C - Listed threatened species and communities

Clauses 18 and 19

46 This clause provides that a person must not take an action that has, will have, or is likely to have a significant impact on a nationally threatened species or ecological community except:

- where a person has obtained approval from the Minister for the taking of the action for the purposes of this clause; or
- where a bilateral agreement provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited State approval process); or

- where a declaration provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited Commonwealth approval process); or
 - where a conservation agreement provides that the action does not require approval.
- 47 In addition, actions taken in accordance with the *Great Barrier Reef Marine Park Act 1975*, or instruments under that Act, and forestry operations covered by the Regional Forest Agreements process do not need approval.
- 48 For the purposes of these clauses a nationally threatened species or nationally threatened ecological community is a species or community listed under this Act in any of the following categories:
- species that are extinct in the wild; or
 - critically endangered species; or
 - endangered species; or
 - vulnerable species; or
 - critically endangered ecological communities; or
 - endangered ecological communities.
- 49 Not all actions affecting a nationally threatened species or community will have, or are likely to have, a *significant impact* on that species or community. For example, approval will not be required for some actions which, if carried out on Commonwealth land, would require a permit under Chapter 5 of this Act - injury or death to one member of a species will, except in the case of the most endangered species, not have a significant impact on the species. This clause therefore does not regulate all actions affecting members of a species or community. In order to discharge Australia's international responsibilities, including obligations under the Convention on Biological Diversity, this clause regulates those activities that will, or are likely to, have a *significant impact* on nationally threatened species or communities.
- 50 The Minister will issue administrative guidelines to provide guidance on determining whether an action has, will have or is likely to have a significant impact on a nationally threatened species or community. These guidelines will reflect the fact that, in determining whether an action will have a significant impact on a species or community, it is necessary to have regard to factors such as: the extent to which the action damages or modifies habitat for the species or community (particularly critical habitat identified in a recovery plan), the extent to which the action will result in injury or death to members of the species or community or will interfere with essential behavioural characteristics (such as breeding and feeding), the effect on important populations of the species or community, the impact on the geographic distribution of

the species or community, and so on. The guidelines will also identify relevant bilateral agreements (including accredited State approval processes) and relevant declarations (including accredited Commonwealth processes), compliance with which will obviate the need for approval.

- 51 In determining whether an action will have a significant impact on a species or community it is necessary to take into account the environment in which the action is to be taken, including other threats or pressures on the species. However, an action carried out by an individual which is not likely to have a significant impact on a threatened species or community will not require approval, even if the overall impact of a large number of individuals independently carrying out actions of the same kind may have a significant impact on the species or community. The cumulative impact of independent actions by different persons, all of which are below the significant impact threshold, are primarily to be addressed through State planning and land management legislation, and recovery plans. Such actions will not require approval under this Act (although they may be addressed in bilateral agreements).
- 52 If it is unclear whether an action requires approval, the person proposing to take the action can refer the action to the Minister for a decision on whether approval is required (clause 68). If the Minister provides advice that an action does not require approval (clause 75), a person will not contravene this clause if the action is taken in accordance with that advice (para 12(2)c). The Minister must provide advice within twenty days of receiving the referral (clause 75).
- 53 Clause 19 ensures that an action for which approval has been granted does not require another approval if the species or community is subsequently listed in a new category.
- 54 This clause provides for a civil penalty of up to 5,000 penalty units for an individual or up to 50,000 penalty units for a body corporate.
- 55 The procedures and requirements for listing native species and ecological communities are set out in Chapter 5, Part 13, Division 1.

Subdivision D - Migratory species

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

- 56 This clause provides that a person must not take an action that has, will have, or is likely to have a significant impact on a listed migratory except:

- where a person has obtained approval from the Minister for the taking of the action for the purposes of this clause; or
 - where a bilateral agreement provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited State approval process); or
 - where a declaration provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited Commonwealth approval process); or
 - where a conservation agreement provides that the action does not require approval.
- 57 In addition, actions taken in accordance with the *Great Barrier Reef Marine Park Act 1975*, or instruments under that Act, and forestry operations covered by the Regional Forest Agreements process do not need approval.
- 58 A listed migratory species is a species listed under one of the following Conventions:
- the Bonn Convention; or
 - JAMBA; or
 - CAMBA; or
 - an international agreement dealing with the conservation of migratory species approved by the Minister under Chapter 5.
- 59 Not all actions affecting a migratory species will have, or are likely to have, a *significant impact* on that species. For example, approval will not be required for some actions which, if carried out on Commonwealth land, would require a permit under Chapter 5 of this Act - injury or death to one member of a species is unlikely to have a significant impact on the species. This clause therefore does not regulate all actions affecting members of a species. In order to discharge Australia's international responsibilities in relation to migratory species, this clause regulates those activities that will, or are likely to, have a *significant impact* on a listed migratory species.
- 60 The Minister will issue administrative guidelines to provide guidance on determining whether an action has, will have or is likely to have a significant impact on a listed migratory species. These guidelines will reflect the fact that, in determining whether an action will have a significant impact on a species, it is necessary to have regard to factors such as: the extent to which the action damages or modifies habitat for the species or community, the extent to which the action will result in injury or death to members of the species or community or will interfere with essential behavioural characteristics (such as breeding and feeding), the extent to which the action alters the migratory route, the effect on important populations of the species or community, the impact

on the geographic distribution of the species or community.. The guidelines will also identify relevant bilateral agreements (including accredited State approval processes) and relevant declarations (including accredited Commonwealth processes), compliance with which will obviate the need for approval.

- 61 In determining whether an action will have a significant impact on a species it is necessary to take into account the environment in which the action is to be taken, including other threats or pressures on the species. However, an action carried out by an individual which is not likely to have a significant impact on a listed migratory species will not require approval, even if the overall impact of a large number of individuals independently carrying out actions of the same kind may have a significant impact on the species. The cumulative impact of independent actions by different persons, all of which are below the significant impact threshold, are primarily to be addressed through State planning and land management legislation, and recovery plans. Such actions will not require approval under this Act (although they may be addressed in bilateral agreements).
- 62 If it is unclear whether an action requires approval, the person proposing to take the action can refer the action to the Minister for a decision on whether approval is required (clause 68). If the Minister provides advice that an action does not require approval (clause 75), a person will not contravene this clause if the action is taken in accordance with that advice (para 12(2)c). The Minister must provide advice within twenty days of receiving the referral (clause 75).
- 63 This clause provides for a civil penalty of up to 5,000 penalty units for an individual or up to 50,000 penalty units for a body corporate.
- 64 The procedures and requirements for listing migratory species are set out in Chapter 5, Part 13, Division 2, Subdivision A.

Subdivision E - Protection of the environment from nuclear actions

Clause 21 - Requirements for approval of nuclear actions

- 65 This clause provides that a constitutional corporation, the Commonwealth or a Commonwealth agency must not take a nuclear action that has, will have, or is likely to have a significant impact on the environment except:
 - where approval has been obtained from the Minister for the taking of the action for the purposes of this clause; or
 - where a bilateral agreement provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited State approval process); or

- where a declaration provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited Commonwealth approval process).
- 66 The clause also provides that a person must not take a nuclear action for the purposes of interstate or overseas trade or commerce or in a Territory if that action has, will have, or is likely to have a significant impact on the environment except in the circumstances identified in the paragraph above.
- 66 If it is unclear whether an action requires approval, the person proposing to take the action can refer the action to the Minister for a decision on whether approval is required (clause 68). If the Minister provides advice that an action does not require approval (clause 75), a person will not contravene this clause if the action is taken in accordance with that advice (para 12(2)c). The Minister must provide advice within twenty days of receiving the referral (clause 75).
- 67 This clause provides for a civil penalty of up to 5,000 penalty units for an individual or up to 50,000 penalty units for a body corporate.

Clause 22 - What is a *nuclear action*?

- 68 This clause defines nuclear actions.
- 69 Nuclear actions include mining or milling uranium ore. To avoid any doubt, this does not include operations for the recovery of mineral sands or rare earths.
- 70 "Establishing or significantly modifying a large scale disposal facility for radioactive waste" is also a nuclear action. It is intended that a judgement about whether a disposal facility is large scale will be based on factors including: the activity of radioisotopes to be disposed of, the half life of the material, the form of the radioisotopes, and the quantity of isotopes handled.
- 71 For example, a National Radioactive Waste Repository would be considered to be a large scale disposal facility. Conversely, radioactive waste disposal facilities operated by hospitals would not be large scale disposal facilities.
- 72 Regulations can be made to define 'large scale disposal facility' for radioactive wastes.

Subdivision F - Marine environment

Clause 23 - Requirement for approval of activities with a significant impact on the Commonwealth marine environment

73 This clause provides that a person must not:

- take an action in a Commonwealth marine area that has, will have, or is likely to have a significant impact on the environment; or
- take an action outside a Commonwealth marine area (including in the coastal waters of a State or the Northern Territory) that has, will have, or is likely to have a significant impact on the environment in a Commonwealth marine area; or
- take an action that is fishing in a fishery managed by the Commonwealth under the *Fisheries Management Act 1991* in the coastal waters of a State or the Northern Territory that has, will have, or is likely to have a significant impact on the environment in those coastal waters;

except:

- where a person has obtained approval from the Minister for the taking of the action for the purposes of this clause; or
- where a bilateral agreement provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited State approval process); or
- where a declaration provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited Commonwealth approval process); or
- where a conservation agreement provides that the action does not require approval.

74 In addition, actions taken in accordance with the *Great Barrier Reef Marine Park Act 1975*, or instruments under that Act, do not need approval.

75 This clause does not apply to actions by the Commonwealth or a Commonwealth agency - relevant actions by the Commonwealth or a Commonwealth agency will require approval under clause 28.

76 Not all actions in the Commonwealth marine area will have, or are likely to have, a *significant impact* on the environment. This clause therefore does not regulate all actions in the Commonwealth marine area.

77 The Minister will issue administrative guidelines to provide guidance on determining whether an action has, will have or is likely to have a significant impact on the environment. Guidelines will also be issued to assist in determining whether an action outside a Commonwealth marine area has, will have or is likely to have a significant impact on the environment in a Commonwealth marine area. These guidelines will also identify relevant bilateral agreements (including accredited State approval processes) and relevant declarations (including accredited

Commonwealth processes such as fisheries management plans), compliance with which will obviate the need for approval.

- 78 If it is unclear whether an action requires approval, the person proposing to take the action can refer the action to the Minister for a decision on whether approval is required (clause 68). If the Minister provides advice that an action does not require approval (clause 75), a person will not contravene this clause if the action is taken in accordance with that advice (para 12(2)c). The Minister must provide advice within twenty days of receiving the referral (clause 75).
- 79 In determining whether an action will have a significant impact on the marine environment it is necessary to take into account the environment in which the action is to be taken, including other threats or pressures to that aspect of the marine environment. However, an action carried out by an individual which is not likely to have a significant impact on the environment protected by this clause will not require approval, even if the overall impact of a large number of individuals independently carrying out actions of the same kind may have a significant impact on the relevant environment. The cumulative impact of independent actions by different persons, all of which are below the significant impact threshold, are not addressed by this clause (although they may be addressed in bilateral agreements).
- 80 This clause provides for a civil penalty of up to 5,000 penalty units for an individual or up to 50,000 penalty units for a body corporate.

Clause 24 - What is a *Commonwealth marine area*?

- 81 This clause defines the Commonwealth marine area.

Subdivision G - Additional matters of national environmental significance

Clause 25 - Requirement for approval of prescribed actions

- 82 This clause provides that actions, representing additional matters of national environmental significance, can be specified in regulations.
- 83 A person must not take an action that is specified in the regulations except:
- where a person has obtained approval from the Minister for the taking of the action for the purposes of this clause; or
 - where a bilateral agreement provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited State approval process); or

- where a declaration provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited Commonwealth approval process); or
 - where a conservation agreement provides that the action does not require approval.
- 84 In addition, actions taken in accordance with the *Great Barrier Reef Marine Park Act 1975*, or instruments under that Act, and forestry operations covered by the Regional Forest Agreements process will not need approval under this clause.
- 85 If it is unclear whether an action requires approval under this clause, the person proposing to take the action can refer the action to the Minister for a decision on whether approval is required (clause 68). If the Minister provides advice that an action does not require approval (clause 75), a person will not contravene this clause if the action is taken in accordance with that advice (para. 12(2)(c)). The Minister must provide advice within twenty days of receiving the referral (clause 75).
- 86 This clause provides for a civil penalty of up to 5,000 penalty units for an individual or up to 50,000 penalty units for a body corporate.
- 87 The clause recognises that regulations could be made for the purposes of this clause only after close consultation with all States and Territories and only after they have been given a reasonable opportunity to comment. The regulations must not be inconsistent with Australia's international obligations.

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

Subdivision A - Protection for environment of Commonwealth land

Clause 26 - Requirement for approval of activities with a significant impact on the environment on Commonwealth land

- 88 This clause provides that a person must not:
- take an action on Commonwealth land that has, will have, or is likely to have a significant impact on the environment; or
 - take an action outside Commonwealth land that has, will have, or is likely to have a significant impact on the environment on Commonwealth land;
- except:

- where a person has obtained approval from the Minister for the taking of the action for the purposes of this clause; or
- where a bilateral agreement provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited State approval process); or
- where a declaration provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited Commonwealth approval process); or
- where a conservation agreement provides that the action does not require approval.

- 89 This clause does not apply to actions by the Commonwealth or a Commonwealth agency - relevant actions by the Commonwealth or a Commonwealth agency will require approval under clause 28.
- 90 In addition, actions taken in accordance with the *Great Barrier Reef Marine Park Act 1975*, or instruments under that Act, and forestry operations covered by the Regional Forest Agreements process do not need approval.
- 91 The Minister may also exempt certain actions on the basis of Australia's defence or security interests or in the case of a national emergency.
- 92 If it is unclear whether an action requires approval, the person proposing to take the action can refer the action to the Minister for a decision on whether approval is required (clause 68). If the Minister provides advice that an action does not require approval (clause 75), a person will not contravene this clause if the action is taken in accordance with that advice (para. 12(2)(c)). The Minister must provide advice within twenty days of receiving the referral (clause 75).
- 93 This clause provides for a penalty of up to 1,000 penalty units for an individual or up to 10,000 penalty units for a body corporate.

Clause 27 - What is *Commonwealth land*?

- 94 This clause defines Commonwealth land.

Subdivision B - Protection of the environment from Commonwealth activities and decisions

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

- 95 This clause provides that 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 environment (inside or outside the Australian jurisdiction) except:

- where a person has obtained approval from the Minister for the taking of the action for the purposes of this clause; or
 - where a bilateral agreement provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited State approval process); or
 - where a declaration provides that the action does not require approval (for example, because it is to be taken in accordance with an accredited Commonwealth approval process); or
 - where a conservation agreement provides that the action does not require approval.
- 96 The Minister may also exempt certain actions on the basis of Australia's defence or security interests or in the case of a national emergency. An exemption may also be given in relation to operations of a Commonwealth agency when the agency is bound to comply with a corresponding State or Territory law dealing with environment protection in undertaking those operations (for example, relevant operations of Telstra).
- 97 In addition, actions taken in accordance with the *Great Barrier Reef Marine Park Act 1975*, or instruments under that Act, and certain forestry operations covered by the Regional Forest Agreements process do not need approval.
- 98 The definition of 'action' ensures that this clause applies only in circumstances where the Commonwealth is the proponent - for example, when the Commonwealth or a Commonwealth agency is undertaking a project or a development. It does not, for example, apply to Commonwealth decisions (such as a decision to approve an action), the provision of funding by the Commonwealth or the entering into an agreement by the Commonwealth.

Part 4 - Cases in which environmental approvals are not needed

Division 1 - Actions covered by bilateral agreements

Clause 29 - Actions declared by agreement not to need approval

- 99 This clause provides that an action may be taken without approval under Part 9 for the purposes of one or more provisions in Part 3 if the action is one of a class of actions declared by a bilateral agreement not to require approval under that provision (or those provisions, as the case may be).
- 100 The bilateral agreements mechanism is an integral feature of the Act. It is through bilateral agreements that the Commonwealth intends to

accredit State assessment processes and, in some cases, State approval decisions provided appropriate standards and criteria are met.

101 Bilateral agreements are dealt with in Chapter 3.

Clause 30 - Extended operation in State and Northern Territory waters

102 This clause extends the application of clause 29 to enable bilateral agreements to cover actions taken in the coastal waters of the States and the Northern Territory and, where relevant State or Territory laws apply, to actions in the Commonwealth marine area.

Clause 31 - Extended operation in non-self-governing Territories

103 This clause extends the application of 29 to enable bilateral agreements to cover actions taken in Territories (which are not self-governing Territories), where relevant State or Territory laws apply. For example, a bilateral agreement may provide that approval is not required under a provision in Part 3 for an action on Christmas Island if approval is obtained in a specified manner under a specified Western Australian law.

Division 2 - Actions covered by Ministerial declarations

Clause 32 - Actions declared by Minister not to need approval

104 This clause provides that an action may be taken without approval under Part 9 for the purposes of one or more provisions in Part 3 if the action is one of a class of actions declared by the Minister not to require approval under that provision (or those provisions, as the case may be).

Clause 33 - Making declarations

105 The Minister may declare that an action in a specified class of actions does not require approval for the purposes of a provision, or provisions, in Part 3 if it is approved in a specified manner by the Commonwealth or a specified Commonwealth agency.

106 Before making a declaration, the Minister must be satisfied that the Commonwealth or the Commonwealth agency, in deciding whether to approve an action, will consider the impacts it has, will have or is likely to have on the aspects of the environment protected by the relevant provision or provisions (subclause 33(2)).

107 The clause lists a number of ways in which a declaration may specify a manner of approving the taking of an action. This list is illustrative and is not exhaustive.

Clause 34 - What is *matter protected* by a provision of Part 3?

108 This clause lists the aspects of the environment protected by each provision in Part 3 of the Act and defines them as the *matter protected* by the relevant provision. This definition, combined with the definition of 'relevant aspects of the environment' is used throughout the Act to ensure that any Commonwealth assessment is limited to examining impacts on these matters. Commonwealth approval decisions are, in taking into account environmental factors, similarly limited to these matters.

Clause 35 - Revoking declarations

109 This clause empowers the Minister to revoke declarations made under clause 33. However, the Act will continue to apply to an action which has been approved by the Commonwealth or a Commonwealth agency in accordance with a declaration before the declaration was revoked as if the revocation had not occurred.

Clause 36 - Other rules for declarations

110 This clause provides that in revoking declarations the Minister must not give preference in the sense of clause 99 of the Constitution.

Division 3 - Actions covered by conservation agreements

Clause 37 - Actions specified as not needing approval

111 This clause provides that an action which is specified in a conservation agreement as not needing approval for the purposes of a provision, or provisions, of Part 3 does not require approval for the purposes of that provision or those provisions. Conservation agreements are described in Part 17.

Division 4 - Forestry operations in certain regions

Clause 38 - Approval not needed for forestry operations permitted by regional forestry agreements

112 RFA forestry operations that are undertaken in accordance with a regional forest agreement do not require approval for the purposes of any provision in Part 3.

Clause 39 - Object of this Subdivision

113 The object of this subdivision recognises that in each RFA region a comprehensive assessment is being, or has been, undertaken to address the environmental, economic and social impacts of forestry operations. In particular, environmental assessments are being conducted in accordance with the *Environment Protection (Impact of Proposals) Act 1974*. In each region, interim arrangements for the protection and management of forests are in place pending finalisation of an RFA. The objectives of

the RFA scheme as a whole include the establishment of a comprehensive, adequate and representative reserve system and the implementation of ecologically sustainable forest management. These objectives are being pursued in relation to each region. The objects of this Act will be met through the RFA process for each region and, accordingly, the Act does not apply to forestry operations in RFA regions.

Clause 40 - Forestry operations in regions not yet covered by regional forestry agreements

114 Subclause 40(1) provides that forestry operations in an RFA region for which there is no regional forestry agreement in force do not require approval for the purposes of any provision in Part 3.

115 Subclause 40(1) does not apply in relation to a RFA region that is the subject of a declaration made under subclause 40(4). Government policy is to complete an RFA for each RFA region by 1 January 2000. Subclause 40(4) provides the Government with the capacity to ensure the Act applies after 1 January 2000 to any region where the RFA process has not been completed in accordance with government policy or where satisfactory progress is not being made. It is not intended that a declaration will be made before 1 January 2000, unless (for example) the RFA process ceases to apply in relation to a region and it is necessary to make a declaration to ensure no preference is given to that region.

Clause 41 - What is an RFA region?

116 This clause provides a definition for each RFA region. Regulations can amend the definition of RFA regions.

Subdivision C - Limits on application

Clause 42 - This division does not apply to some forestry operations

117 This division does not apply to forestry operations:

- in a property included in the World Heritage List; or
- in a wetland designated under Article 2 of the Ramsar Convention.

118 In addition, the division does not apply to forestry operations that are incidental to another action the primary purpose of which does not relate to forestry. For example, the division does not obviate the need for approval for clearing activity (even if such activity falls within the definition of a 'forestry operation') which is incidental to the construction of a residential subdivision (the primary purpose of the subdivision does not relate to forestry). Approval would only be required for the clearing activity if it was likely to have a significant impact on a matter of national environmental significance - see Part 3.

Division 5 - Actions in the Great Barrier Reef Marine Park

Clause 43 - Actions taken in accordance with permission

119 This clause provides that actions relevantly authorised under the *Great Barrier Marine Park Act 1975* do not require approval.

Chapter 3 - Bilateral agreements

Part 5 - Bilateral agreements

Division 1 - Object of Part

Clause 44 - Object of this Part

120 This clause sets out the object of this Part.

Division 2 - Making bilateral agreements

Subdivision A - Power to make bilateral agreements

Clause 45 - Minister may make agreements

121 The Minister may enter into a bilateral agreement with a State or a self-governing Territory about one or more of the matters identified in clause 45. Bilateral agreements may detail the Commonwealth accreditation of, for example, State assessment processes, State decision-making processes and management plans prepared under State legislation. A bilateral agreement may also identify other measures that a State or the Commonwealth agrees to implement to protect the environment and promote the conservation and sustainable use of natural resources.

Clause 46 - Agreement may declare actions do not need approval under Part 9

122 A bilateral agreement may declare that actions in a specified class of actions do not require approval for the purposes of one or more provisions in Part 3 if:

- the taking of the action is approved by a State or Territory (or agency thereof) in a specified manner - for example, after assessment in accordance with specified State legislation and after applying certain criteria when deciding whether to grant approval; or

- the taking of the action is approved by the Commonwealth or a Commonwealth agency in a specified manner- for example, after considering an assessment conducted under specified State legislation and reaching agreement with the State on whether approval should be granted; or
 - the action is taken in a specified manner - for example, in accordance with a management plan agreed by the State and the Commonwealth.
- 123 If a bilateral agreement declares that actions in a class of actions do not need approval under Part 9 for the purposes of one or more provisions in Part 3, then a person does not need approval under those provisions to take an action in that class. The Commonwealth is, in effect, agreeing to rely upon an accredited approval process.
- 124 A bilateral agreement may only declare that a class of actions does not need approval if the Minister is satisfied that the person giving approval will take relevant impacts into account in deciding whether to grant approval. The impacts that must be taken into account relate to the matters protected by the provisions for which approval will not be required.
- 125 A bilateral agreement may declare that actions taken in a specified manner do not need approval by the Commonwealth or a State only if the Minister is satisfied that taking the action in the specified manner will reduce to acceptable levels the impacts on any matter protected by the provisions for which approval will not be required.

Clause 47 - Agreement may declare classes of action do not require assessment

- 126 A bilateral agreement can declare that actions in a specified class do not require assessment under Part 8 of this Act if they are assessed in a specified manner. The Commonwealth may, accordingly, accredit and rely upon State assessment processes instead of requiring assessment under this Act.
- 127 A specified manner of assessment can be accredited under a bilateral agreement for a class of actions only if the Minister is satisfied that the assessment will cover all impacts of the actions on each matter protected by a provision in Part 3.
- 128 The bilateral agreement must provide for the Minister to receive an assessment report if the action being assessed under the accredited process will require approval by the Minister under Part 9. The report

must contain enough information to allow the Minister to make an informed decision.

Clause 48 - Other provisions of bilateral agreements

129 This clause lists some matters for which provision may be made in bilateral agreements. This list is not exhaustive.

Clause 49 - Express provision needed to affect Commonwealth areas or actions

130 A bilateral agreement will not apply to actions in Commonwealth areas or actions by the Commonwealth or a Commonwealth agency unless an express provision is included to that effect.

Subdivision B Prerequisites for making bilateral agreements

Clause 50 - Minister may only enter into agreement if prescribed criteria are met

131 The Minister may enter into a bilateral agreement only if it accords with the objects of the Act and if it accords with any requirements prescribed by the regulations. The regulations may identify criteria and standards - either generally or in relation to specific matters of national environmental significance - that must be met before an assessment or an approval process can be accredited under a bilateral agreement.

Clauses 51 to 56

132 These clauses set out the matters on which the Minister must be satisfied before entering into a bilateral agreement. The intention of these clauses is to ensure that accreditation of State assessment and approval processes promotes the objects of the Act, including the protection of world heritage properties, Ramsar wetlands, nationally threatened species, migratory species and the Commonwealth marine environment. The Minister may not enter into bilateral agreements which will provide an inadequate level of protection for these matters of national environmental significance.

Division 3 Ending and suspending the effect of bilateral agreements

Subdivision A Cancellation and suspension of effect

Clauses 57 to 63

- 133 These clauses empower the Minister to cancel or suspend all or part of a bilateral agreement either generally or in relation to actions in a specified class.
- 134 The Minister may cancel or suspend all or part of a bilateral agreement if he or she is satisfied that the relevant State or Territory:
- has not complied or will not comply with the agreement, or
 - has not given or will not give effect to the agreement in a manner consistent with the objects of the Act and that promotes the discharge of Australia's relevant international obligations.
- 135 These clauses also provide for the emergency suspension of a bilateral agreement, set out certain consultation and notice requirements and provide for the revocation of a suspension or cancellation.

A person with standing to seek an injunction may refer an alleged contravention of a bilateral agreement to the Minister. The Minister must decide whether the bilateral agreement has been contravened and, if so, decide what action, if any, is necessary.

- 136 The Minister may cancel or suspend a bilateral agreement if requested by the other party to the bilateral agreement.

Clause 64 - Cancellation or suspension of bilateral agreement does not affect certain actions

- 137 If, at the time of the suspension or cancellation of a bilateral agreement, an action did not require approval under Part 9 because:
- it had been approved in accordance with the bilateral agreement;
 - or
 - it was being taken in the manner specified in the bilateral agreement;
- then the Act continues to operate in relation to that action as if the suspension or cancellation had not occurred.

Subdivision B Expiry of bilateral agreements

Clause 65 - Expiry and review of bilateral agreements

- 138 The term of a bilateral agreement may not exceed five years, and must be subject to a review of their operation.

Chapter 4 - Environmental Assessment and Approvals

Part 6 - Simplified outline of this Chapter

Clause 66 - Simplified outline of this Chapter

139 This clause provides a simplified outline of Chapter 4 (environmental assessments and approvals)

Part 7 - Deciding whether approval of actions is needed

Division 1 - Referral of proposals to take action

Clause 67 What is a *controlled action*

140 Controlled actions are actions described in Part 3 which require the Minister's approval under Part 9. Accordingly, an action which does not require approval under Part 9 because of the operation of a bilateral agreement is not a controlled action.

Clause 68 - Person proposing to take action may refer proposal to Minister

141 A person (including a Commonwealth agency, a State or an agency of a State) who proposes to take an action which the person believes is a controlled action must refer it to the Minister for decision on whether that action requires approval. The person may also refer an action for a decision if the person believes it is not a controlled action.

Clause 69 State or Territory may refer proposal to Minister

142 This clause provides that if a State, a self-governing Territory or an agency of either becomes aware of a proposed action for which it has administrative responsibility, it may refer the proposed action to the Environment Minister for a decision on whether the proposed action requires approval. This is intended to facilitate arrangements whereby States can refer actions on behalf of proponents.

Clause 70 - Minister may request referral of proposal

143 The Minister may ask for a proposed action to be referred if he or she believes approval is required.

Clause 71 - Commonwealth agency may refer proposal to Minister

144 A Commonwealth agency may refer a proposed action to the Minister.

Clause 72 - Form and content of referrals

145 Regulations must be made prescribing the form and content of referrals.

Clause 73 - Notifying person proposing to take action of referral

146 If a proposal by a person to take an action is referred to the Minister by a State or Territory (or an agency thereof) or a Commonwealth agency, the Minister must inform the person of the referral.

Clause 74 - Inviting provision of information on referred proposal

147 After receiving a referral, the Environment Minister must invite:

- Commonwealth Ministers with administrative responsibilities relating to the proposed action to provide relevant information; and
- if the action relates to a matter of national environmental significance, the appropriate State or Territory Minister to comment on whether the action requires approval; and
- the person proposing to take the action to provide relevant information (if that person did not refer the action).

148 If the person referring the proposed action considers it to be a controlled action, the Environment Minister need not invite information or comments from State, Territory or other Commonwealth Ministers. The intent of this provision is to allow the person proposing to take the action to streamline the process by avoiding certain consultations.

Division 2 - Ministerial decision whether action needs approval

Clause 75 - Does the proposed action need approval?

149 The Environment Minister must decide whether an action that has been referred is a controlled action and, if so, which provisions of Part 3 are controlling provisions - that is, under which provisions is approval required.

150 A proponent must be designated in relation to a controlled action. A proponent may be a person other than the person proposing to take the action only if both persons agree.

151 If the person who proposes to take the action referred it and indicated that he or she thought it was a controlled action, the Environment Minister must decide whether it is a controlled action and designate a proponent within ten business days. In other cases, the Environment Minister must decide whether it is a controlled action and designate a proponent within twenty business days.

152 The time for making the decision may be extended only:

- with the agreement of the person proposing to take the action; or

- if the Minister believes on reasonable grounds that the referral does not contain enough information.

153 In deciding whether an action is a controlled action - whether it has a significant impact on any of the matters protected by the provisions of Part 3 - the Minister must consider any adverse impacts but not beneficial impacts. The intent of this provision is to ensure that an action which has only beneficial impacts on a matter protected by any of the provisions of Part 3 is not a controlled action.

Clause 76 - Minister may request more information for making decision

154 If the Minister believes on reasonable grounds that a referral does not contain enough information to make a decision under clause 75, he or she may request additional specified information.

Clause 77 - Notice and reasons for decision

155 The Minister must give written notice of a decision under clause 75 and, if requested, a statement of reasons. Reasons are not required when the person proposing to take the action referred it to the Minister and indicated he or she believed it was a controlled action.

156 If the Minister decides that the action is not a controlled action in relation to one or more provisions in Part 3 because it will be taken in a particular manner, the notice must identify the manner of taking the action. This applies even if the action is not being taken in accordance with a bilateral agreement or a declaration.

Clause 78 - Reconsideration of decision

157 The Environment Minister may reconsider his or her decision under clause 75 only in strictly limited circumstances.

158 The Environment Minister may remake a decision under clause 75 only if:

- substantial new information has become available or there has been a substantial change in circumstances not foreseen at the time of the original decision (these grounds will be satisfied only in exceptional circumstances);
- the Minister originally decided that the action was not a controlled action because it was to be taken in a particular manner specified in the notice under clause 77 and the Minister is now satisfied that the action is not being, or will not be, taken in the particular manner; or
- the Minister originally decided that the action was not a controlled action because of provisions in a bilateral agreement or a declaration under clause 33 and the relevant provisions are no longer in effect (but see clause 64 and subclause 35(2)); or

- a State or Territory Minister requests that the first decision be reconsidered under clause 79;

159 A decision may not be reconsidered after the action has been taken or after the Minister has granted or refused approval for the taking of the action.

Clause 79 Reconsideration of decision on request of a State or Territory

160 The relevant State or Territory Minister may request the Environment Minister to reconsider his or her decision under clause 75. This does not apply if the person proposing to take the action referred the action and indicated he or she thought it was a controlled action.

161 The relevant State or Territory Minister may make such a request within five business days of receiving notice of the decision.

162 The Environment Minister must either confirm the original decision or make a new decision within twenty business days.

Part 8 - Assessing impacts of controlled actions

Division 1 - Simplified outline of this Part

Clause 80 Simplified outline of this part

163 This clause provides a simplified outline of Part 8 (assessing impacts of controlled actions)

Division 2 - Application of this Part

Clause 81 Application

164 This clause provides that the provisions of Part 8 (assessing impacts of controlled actions) apply to the assessment of the 'relevant impacts' of a controlled action.

Clause 82 Relevant impacts of an action

165 The relevant impacts of an action are the impacts that the action has, will have, or is likely to have on the matters protected by each provision of Part 3 that is a controlled provision (ie, the provisions for which a approval is required). The intention of this clause is to define the environmental impacts for which the Commonwealth is responsible for assessing and taking into account when deciding whether to give approval. In this way, Commonwealth involvement in environmental matters is focussed on matters of national environmental significance. The Commonwealth does not assess all impacts of an action (unless asked to do so by a State - see, for example, subclause 97(3)).

Clause 83 This Part does not apply to impacts to be assessed under bilateral agreement

166 Subclause 83(1) provides that an action is not assessed under Part 8 if a bilateral agreement declares that actions in a class of actions that includes the action need not be assessed.

Clause 84 - This Part does not apply if action is covered by a declaration

167 This clause provides that the Minister may declare that actions in a specified class of actions assessed by the Commonwealth or a Commonwealth agency in a specified manner does not require assessment under this Part.

168 The clause also sets out some prerequisites for making a declaration.

Division 3 - Decision on assessment approach

Subdivision A - Simplified outline of this division

Clause 85 - Simplified outline of this division

169 This clause provides a simplified outline of Division 3 (decision on assessment approach)

Subdivision B - Deciding on approach for assessment

Clause 86 - Designated proponent must provide preliminary information for assessment

170 Before the Minister decides on an assessment approach, the proponent or designated proponent must give information to the Minister, the form and content of which is prescribed in the regulations.

Clause 87 - Minister must decide on approach for assessment

171 This clause provides that the Environment Minister must decide on an approach for assessing the relevant impacts of a controlled action (where the action is not being assessed under a bilateral agreement or a declaration).

172 The Minister can chose one of the following assessment approaches:

- assessment by a specially accredited process
- assessment on preliminary documentation (see Chapter 4, Part 8, Division 4)

- assessment by public environment report (see Chapter 4, Part 8, Division 5)
 - assessment by environmental impact statement (see Chapter 4, Part 8, Division 6)
 - assessment by inquiry (see Chapter 4, Part 8, Division 7)
- 173 This clause sets out the information that must be considered by the Minister in making his or her decision, including when consultation is required with State or Territory Ministers.
- 174 The option of assessment by a specially accredited process ensures there can be up-front accreditation of a State or Territory process or of another Commonwealth process. It therefore provides for case-by-case accreditation of State or Commonwealth processes for actions not covered by a bilateral agreement or a declaration. Subclause 87(4) provides that an assessment can only be made by a specially accredited process if the Minister is satisfied that the process meets standards prescribed by the regulations, will assess all relevant impacts, and will provide a report containing enough information to allow the Minister to make an informed decision about whether to approve the action.
- 175 The Minister may decide that the appropriate assessment approach is assessment on preliminary documentation only if satisfied that sufficient information has been provided to allow an informed decision about whether to approve the taking of the controlled action to be made.

Clause 88 - Timing on decision on assessment approach

- 176 The Minister must decide which assessment approach to use within 20 business days of deciding the action is a controlled action or of receiving information under clause 271. The time for making this decision can be extended only if:
- the Minister selects a different approach to that suggested by a relevant State or Territory Minister (see subclause 87(2)), - in which case 30 business days are allowed for a decision; or
 - the Minister and the proponent agree on an extended period; or
 - the Minister requests more information under clause 89.

Clause 89 Minister may request more information for making decision

- 177 The Minister may request further specified information from the designated proponent if he or she believes on reasonable grounds that it is required in order to make an informed decision about which assessment process to use.

Clause 90 Directing an inquiry after trying another approach

178 The Minister may decide that the appropriate assessment approach is an inquiry after considering a draft EIS or a draft PER. The Minister should only decide to direct an inquiry under this clause in exceptional circumstances, where the draft EIS or PER identifies significant potential impacts that were not originally anticipated or the Minister decides that the action cannot be adequately assessed except by an inquiry.

Clause 91 Notice of decision of assessment approach

179 Within ten business days of deciding on an assessment approach, the Minister must give written notice of the decision.

180 If the assessment is to be by a specially accredited process, the notice must specify the process (see also clause 87)

Division 4 - Assessment on preliminary documentation

Clause 92 - Application

181 Division 4 outlines the assessment process to be followed for an assessment on preliminary information.

Clause 93 - Public comment on information included in referral

182 Within ten business days of deciding that the relevant impacts should be subject to an assessment on preliminary information, the Minister may direct the proponent to publish certain information and invite public comment.

Clause 94 - Revised documentation

183 The proponent must revise the information already provided to the Minister after taking into account the public comments received and provide the Minister with revised information. If no public comments are received the proponent must inform the Minister in writing. If the proponent believes that the comments received do not warrant any changes or additions, then a statement to that effect may be made.

184 The Minister may reject the revised information if he or she believes on reasonable grounds it is inadequate for the purpose of making an informed decision whether to approve the taking of the controlled action.

Clause 95 - Assessment report

185 The Secretary must prepare an assessment report for the Minister within twenty days of the information on which the assessment is to be based becoming available. The report must be made available to members of the public upon request, with the exception of certain information.

Division 5 - Public environment reports

Clause 96 - Application

186 Division 5 outlines the assessment process to be followed for a Public Environment Report.

Clause 97 - Minister must prepare guidelines for draft public environment report

187 The Environment Minister must prepare written guidelines for the content of a draft Public Environment Report (PER).

188 The guidelines should address all matters specified by the regulations and should ensure that the report will contain enough information to allow the Minister to make an informed decision about whether to approve the action.

189 The guidelines may also require the report to contain information on impacts other than the relevant impacts:

- at the request of the appropriate State or Territory Minister; and
- if the action is to be taken by a constitutional corporation or is to be taken for the purposes of interstate or overseas trade or commerce.

190 The purpose of this clause is to ensure that, if a State or Territory wishes to accredit and rely upon the Commonwealth PER process, the PER can address all environmental impacts.

191 The Minister may invite and take account of comments from any person on the guidelines.

Clause 98 - Designated proponent must invite comment on draft public environment report

192 The proponent must prepare a draft PER in accordance with the guidelines prepared by the Minister and, if the Minister has approved publication of the draft PER, publish it in accordance with the regulations.

193 The Minister should approve the draft PER only if it adequately addresses the information required by the guidelines.

194 The period for public comment must be specified by the Minister, and must be at least 20 business days.

195 The proponent must provide the Minister with a copy of any comments received.

Clause 99 - Finalising public environment report

196 After the public comment period, the proponent must revise the draft PER, taking into account the public comments.

197 The Minister may refuse to accept the finalised PER if he or she believes on reasonable grounds that it is inadequate for the purpose of making an informed decision whether to approve the taking of the controlled action.

Clause 100 - Assessment report

198 The Secretary must prepare an assessment report for the Environment Minister within 20 days of the Minister accepting the final PER. The report must be made available to members of the public upon request, with the exception of some information.

Division 6 - Environment impact statements

Clause 101 - Application

199 Division 6 outlines the assessment process to be followed for an Environmental Impact Statement.

Clause 102 - Minister must prepare guidelines for draft environmental impact statement

200 The Environment Minister must prepare written guidelines for the content of a draft Environmental Impact Statement (EIS).

201 The guidelines should address all matters specified by the regulations and should ensure that the report will contain enough information to allow the Minister to make an informed decision about whether to approve the action.

202 The guidelines may also require the report to contain information on impacts other than the relevant impacts:

- at the request of the appropriate State or Territory Minister; and
- if the action is to be taken by a constitutional corporation or is to be taken for the purposes of interstate or overseas trade or commerce.

203 The purpose of this clause is to ensure that, if a State or Territory wishes to accredit and rely upon the Commonwealth EIS process, the EIS can address all environmental impacts.

204 The Minister may invite and take account of comments from any person on the guidelines.

Clause 103 - Designated proponent must invite comment on draft environmental impact statement

- 205 The proponent must prepare a draft EIS in accordance with the guidelines prepared by the Minister and, if the Minister has approved publication of the draft EIS, publish it in accordance with the regulations.
- 206 The Minister should approve the draft EIS only if it adequately addresses the information required by the guidelines.
- 207 The period for public comment must be specified by the Minister, and must be at least 20 business days.
- 208 The proponent must provide the Minister with a copy of any comments received.

Clause 104 - Finalising draft environmental impact statement

- 209 After the public comment period, the proponent must revise the draft EIS, taking into account the public comments.
- 210 The Minister may refuse to accept the finalised EIS if he or she believes on reasonable grounds that it is inadequate for the purpose of making an informed decision whether to approve the taking of the controlled action.

Clause 105 - Assessment report

- 211 The Secretary must prepare an assessment report for the Environment Minister within 20 days of the Minister accepting the final EIS. The report must be made available to members of the public upon request, with the exception of some information.

Division 7 Inquiries

Subdivision A - preliminary

Clause 106 - Simplified outline

- 212 This clause provides a simplified outline of Division 7 (inquiries)

Subdivision B - Establishment of inquiries

Clause 107 - Appointing commissioners and setting terms of reference

- 213 This clause provides that, having decided that an inquiry is the appropriate means of assessment, the Minister must appoint one or more commissioners, and provide them with written terms of reference.
- 214 The inquiry may address impacts other than the relevant impacts:
– at the request of the appropriate State or Territory Minister; and

- if the action is to be taken by a constitutional corporation or is to be taken for the purposes of interstate or overseas trade or commerce.

215 The purpose of this clause is to ensure that, if a State or Territory wishes to accredit and rely upon the Commonwealth inquiry process, the inquiry can address all environmental impacts.

Clause 108 - Publicising inquiry

216 Subclause 108(1) provides that the commission must publish its terms of reference and any information provided to the Minister for the purpose of making a decision that an inquiry was the appropriate form of assessment.

Subdivision C - Conduct of inquiries

Clauses 109 - 120

217 These clauses deal with the conduct of inquiries.

Subdivision D - Inquiry reports

Clause 121 - Timing of report

218 The commission's time to report will be specified in the terms of reference by the Minister.

Clause 122 - Publication of report

219 With the restrictions listed under paragraph 110(3)(b), the commission must publish a report in accordance with the regulations.

Subdivision E - Commissioners' terms and conditions

Clauses 123 -129

220 These clauses deal with terms and conditions.

Part 9 - Approval of actions

Division 1 - Decisions on approval and conditions

Subdivision A - General

Clause 130 - Timing of decision on approval

221 The Environment Minister must decide whether or not to approve the taking of a controlled action within:

- thirty business days from the receipt of an assessment report; or

- forty business days from the receipt of a report from a commission that has conducted an inquiry relating to the action.

222 The Minister may extend this period only if:

- it is not practicable to adequately consider comments from another Commonwealth Minister within the time period; or
- the Minister has requested additional information under clause 132.

Clause 131- Inviting comments from other Ministers before decision

223 Before deciding whether to approve the taking of an action and what (if any) conditions to attach to an approval, the Environment Minister must inform other Commonwealth Ministers with administrative responsibilities relating to the action about the decision that he or she proposes to make (including any conditions that are proposed to be attached to an approval) and invite their comment.

224 The purpose of this clause is to ensure that the approval decision is taken after proper consideration of all relevant factors, including economic and social matters considered consistently with the principles of ecologically sustainable development. If Ministers do not agree on the proposed approval decision, this clause is intended to enable the Environment Minister to seek and consider advice from the Prime Minister or Cabinet on the relevant issues.

Clause 132 - Requesting further information for approval decision

225 The Environment Minister may request further specified information if he or she believes on reasonable grounds that not enough information is available to make an informed decision to approve, or not approve, the controlled action.

Clause 133 - Grant of approval

226 The Environment Minister may approve the taking of an action subject to any necessary conditions.

Clause 134 - Attaching conditions to an approval

227 This clause provides that the Minister can attach conditions to an approval only if she or he is satisfied that the condition is necessary or convenient for:

- protecting a matter protected by a relevant provision of Part 3, or
- repairing or mitigating damage to that matter (or those matters).

228 This clause is intended to allow the Minister to impose a broad range of conditions. For example, an approval to establish and maintain a road in

a world heritage area could be subject to a condition that the person rehabilitate an existing road in the area.

- 229 The clause identifies some classes of conditions that can be imposed. The list is not intended to be exhaustive. The ability to impose a condition requiring compliance with conditions identified in another instrument is intended to facilitate the 'accreditation' of agreed conditions implemented primarily through approvals granted under State legislation. The requirement to consider any relevant conditions imposed by State or Territory laws or other Commonwealth laws is also intended to facilitate reliance on other regulatory regimes, where this is appropriate to avoid duplication.
- 230 Finally, there is a requirement to consider the desirability of ensuring, to the extent practicable, that a condition is a cost-effective means for the person taking the action and the Commonwealth to achieve the object of the condition.

Clause 135 - Certain approvals and conditions must not give preference

- 231 Relevant approvals and conditions must not give preference.

Subdivision B - Considerations for approvals and conditions

Clause 136 - General considerations

- 232 This clause identifies the considerations to be taken into account when deciding whether to approve an action and what conditions (if any) to attach. The considerations include relevant advice from other Ministers with administrative responsibilities relating to the action (including where this advice is provided through Cabinet or the Prime Minister).

Clauses 137 - 141

- 233 In deciding whether to approve an action and what conditions to impose, the Minister must not act inconsistently with Australia's obligations under relevant Conventions. One of the objects of the Act is to assist in the discharge of Australia's obligations under international environmental law.

Division 2 - Requirement to comply with conditions

Clause 142 - Compliance with conditions on approval

- 234 A person must not do or fail to do an act or thing where the doing or failure contravenes a condition.

Division 3 - Variation of conditions and suspension and revocation of approvals

Clause 143 - Variation of conditions attached to approval

235 This clause identifies the circumstances in which the Minister may revoke, vary or add to any conditions attached to an approval.

Clause 144 - Suspension of approval

236 This clause identifies the circumstances in which the Minister may suspend the approval of an action.

Clause 145 - Revocation of approval

237 This clause identifies the circumstances in which the Minister may revoke the approval of an action.

Part 10 - Strategic assessment

Clause 146 - Minister may agree on strategic assessment

238 This clause provides for the conduct of strategic assessments. A strategic assessment is an assessment of actions that may be carried out under a proposed policy, program or plan. A strategic assessment of a policy, program or plan allows for the early assessment of the cumulative impacts of relevant individual actions under that policy, program or plan.

239 This clause sets out the minimum requirements for a strategic assessment under the Act, allowing flexibility as to how these requirements can be implemented.

240 The outcomes of a strategic assessment may be taken into account in deciding what the appropriate assessment approach is for each individual action under the policy, program or plan (under clause 87).

241 In addition, if the strategic assessment assesses all of the relevant impacts of the actions under the policy, plan or program, the Minister may declare under clause 33 that specified actions approved by the Commonwealth or a Commonwealth agency in accordance with the policy, plan or program do not need approval for the purposes of specified sections of Part 3.

242 A bilateral agreement may also specify that actions approved or taken in accordance with a policy, plan or program do not need approval for the purposes of specified sections of Part 3.

Division 2 Assessment of Commonwealth-managed fisheries

Clause 147 - Simplified outline of this Division

- 243 This clause provides a simplified outline of the Division.
- 244 It is the intention of the Minister to make a declaration under clause 33 'accrediting' the existing plans or policies for managing fisheries covered by this Division pending the conduct of strategic assessments - that is, declaring that approval is not required for actions approved (eg, licensed) in accordance with existing plans or policies.

Clause 148 - Assessment before management plan is determined

- 245 An agreement must be made under clause 147 to conduct a strategic assessment which assesses the relevant impacts of actions taken under a management plan for a fishery;
- before AFMA determines a management plan (under the *Fisheries Management Act 1991*); and
 - before the Minister administering the *Torres Strait Fisheries Act 1984* determines a management plan under that Act.
- 246 Any recommendations made by the Minister as a result of the strategic assessment must be considered.

Clause 149 - Assessment before determination that no plan required

- 247 An agreement must be made under clause 146 to conduct a strategic assessment which assesses the relevant impacts of actions taken under the policy for managing a fishery before AFMA determines that a management plan is not warranted for a fishery under the *Fisheries Management Act 1991*.
- 248 Any recommendations made by the Minister as a result of the strategic assessment must be considered.

Clause 150 - Assessment of all fisheries without plans must be started within 5 years

- 249 Before the end of three years after this Act commences, AFMA must make agreements with the Minister under clause 146 for the strategic assessment of two-thirds of the fisheries managed by AFMA under the *Fisheries Management Act 1991*. All fisheries managed by AFMA under the *Fisheries Management Act 1991* must be covered by a strategic assessment agreement within 5 years.
- 250 This clause does not apply to fisheries for which a plan of management is in force when this Act commences. In addition, this clause does not require another agreement to be reached if a fishery is covered by an agreement made as a result of clause 148 or clause 149.

Clause 151 - Assessment of all Torres Strait Fisheries to be started within 5 years

251 Agreements for the strategic assessment of actions taken under policies for managing fishing under the *Torres Strait Fisheries Act 1984* must be made within five years, where these actions are not covered by management plans in force under that Act or an agreement for strategic assessment reached as result of clause 148.

Clause 152 - Further assessment if impacts greater than previously assessed

252 Another agreement for strategic assessment must be made if the Environment Minister and the Minister administering the *Fisheries Management Act 1991* agree that the relevant impacts of actions in a relevant fishery or under a relevant policy are likely to be significantly greater than the impacts identified in the most recent strategic assessment. An additional agreement is not required if a management plan is in force under the *Fisheries Management Act 1991*.

Clause 153 - Minister must make declaration if he or she endorses plan or policy

253 If, at the conclusion of a strategic assessment, the Minister endorses a relevant plan or policy, the Minister must make a declaration under clause 33 that actions approved under the plan or policy do not require approval for the purposes of clause 23.

Clause 154 - This Division does not limit Division 1

254 This clause provides that this Division does not limit Division 1.

Part 11 - Miscellaneous rules about assessment

Division 1 - Rules about timing

Clause 155 - This chapter ceases to apply to lapsed proposals

256 This clause provides that assessments may be terminated if the proponent of the action does not advance the assessment within a reasonable period of having been requested to do so by the Minister.

Clause 156 - General rules about time limits

257 This clause provides some general rules about time limits.

Division 2 - Actions in area offshore from State or Northern Territory

Clause 157 - Actions treated as though they were in a State or the Northern Territory

258 This clause extends the application of various provisions to actions taken in the coastal waters of a State or the Northern Territory as if they were within a State or the Northern Territory.

Division 3 Exemptions

Clause 158 - Exemptions from Chapter 2 and this Chapter

259 This clause provides that the Minister may exempt a specified action by a specified person from any requirement of Part 3 or Chapter 4.

260 The effect of this provision is that the Minister may declare that a specific action by a specific person does not require approval or does not require assessment prior to approval or is exempt from any or all steps in the assessment process.

261 The Minister may grant exemptions under this clause only in the national interest.

Division 4 - Application of Chapter to actions that are not controlled actions

Subdivision A - Minister's advice on authorising actions

Clause 159 - Simplified outline of this Subdivision

262 This clause provides a simplified outline of Subdivision B.

Clause 160 - Requirement to take account of Minister's advice

263 This clause requires Commonwealth agencies or employees to obtain and consider advice from the Environment Minister before authorising certain actions. The requirement to obtain advice before granting an authorisation does not apply if a previous assessment under this subdivision has, or will, relevantly address the impacts associated with the authorisation.

Clause 161 - Seeking the Minister's advice

264 This clause provides that the actions referred to in clause 160 may be referred to the Minister either by the relevant person or agency or at the Minister's request. When an action is referred, a designated proponent must also be nominated.

Clause 162 - Assessment of the action

265 This clause provides that the action is to be assessed in accordance with Part 8 (modified as necessary).

Clause 163 - Providing advice

266 This clause provides for the Environment Minister to give advice to the Commonwealth agency or Commonwealth employee who referred the proposal.

Clause 164 - Reporting on response to advice

- 267 This clause requires the Commonwealth agency or Commonwealth employee who referred the proposal for advice to give a report to the Environment Minister stating:
- the action taken in relation to the Minister’s advice; and
 - if the agency or employee did not give effect to the advice why the agency or employee did not.

Subdivision B - Assessment of applications for permits relating to whales, dolphins and porpoises

Clause 165 - Assessment of applications for permits relating to whales, dolphins and porpoises

- 268 This clause provides for the application of the assessment process in Part 8 of the Act (modified as necessary) to the consideration of applications for a permit under Division 3, Part 16.

Subdivision C - Assessment under agreement with State or Territory

- 269 This Subdivision allows a State or Territory to accredit a Commonwealth assessment process for an action that is not a controlled action.

Clause 166 - This subdivision applies if Ministers agree it should

- 270 This clause provides that, if agreement is reached, an action of a kind identified in this clause can be assessed under this subdivision.

Clause 167 - Making an agreement

- 271 This clause empowers the Minister to enter into an agreement with a Minister of a State or Territory, but only if:
- the action to be assessed is not a controlled action, and
 - the agreement does not give preference within the meaning of section 99 of the Constitution.

Clauses 168 to 170

- 272 These clauses provide that assessments will be carried out using one of the procedures set out in Part 8 or Part 10, with appropriate modifications. The modifications to the procedures are described in these clauses.

- 273 The agreement must specify which procedure is to be used.

Chapter 5 – Conservation of biodiversity

Part 12 – Identifying and monitoring biodiversity and making bioregional plans

Division 1 – Identifying and monitoring biodiversity

Clause 171 Identifying and monitoring biodiversity

274 This clause empowers the Minister to provide a person with financial or other assistance, subject to any conditions the Minister thinks fit, for the purpose of identifying and monitoring components of biodiversity.

Clause 172 to 175

275 These clauses require the Minister to prepare inventories that identify, and state the abundance of, listed threatened species, listed threatened ecological communities, listed migratory species, listed marine species, and cetaceans on Commonwealth land and in Commonwealth marine areas. These clauses provides that areas must be covered by an inventory within 5 years of commencement of the Act (10 years for marine areas) or within 5 years of becoming a Commonwealth area (10 years for marine areas), whichever is the later. Commonwealth agencies with an interest in Commonwealth land or a Commonwealth marine area are required to provide all reasonable assistance in preparing an inventory which is to cover the land or marine area over which they hold an interest.

276 The Minister must take reasonable steps to keep such inventories and surveys up to date.

277 None of the obligations that this Act imposes in respect of Commonwealth areas are affected by the lack of an inventory or survey prepared under clauses 172 or 173.

278 Listed threatened species, listed threatened ecological communities, listed migratory species, and listed marine species are described in Part 16.

Division 2 – Bioregional Plans

Clause 176 Bioregional plans

279 This clause empowers the Minister to:

- prepare bioregional plans for bioregions that are entirely within a Commonwealth area, and
- cooperate with States and Territories (or their agencies), or other persons, in preparing bioregional plans.

280 A bioregion is an area of one whole or several interconnected ecosystems characterised by its landforms, vegetative cover, human culture, and history. In determining the boundaries of a bioregion account will be taken of administrative and other regional boundaries. A bioregional plan provides a “blueprint” for the ecologically sustainable management of natural resources within a bioregion, taking into account social and geographic elements. Sub clause 4 lists some matters that may be

included in bioregional plans, including elements that facilitate ongoing monitoring and review to ensure that plan remains relevant.

281 Subclause (5) provides that the Minister may have regard to a bioregional plan when making decisions under this Act, where the plan is relevant.

Clause 177 Obligations under this Act unaffected by lack of bioregional plans

282 This clause provides that obligations imposed by this Act are not affected by the lack of a bioregional plan for any Commonwealth area.

Part 13 – Species and communities

Division 1 – Threatened native species and ecological communities

Subdivision A – Listing

Clause 178 and 179 Listing of threatened species

283 These clause provide that the Minister must establish a list of threatened native species, divided into six categories: ‘extinct’, ‘extinct in the wild’, ‘critically endangered’, ‘endangered’, ‘vulnerable’ and ‘conservation dependent.’ The eligible categories for listing are consistent with the International Union for the Conservation of Nature Red List categories. The list is to be established by instrument published in the Gazette (Subclause 1).

284 When first established, the list is only to include species listed under Schedule 1 of the *Endangered Species Protection Act 1992* immediately prior to the date of commencement of this Act. Species previously listed under the *Endangered Species Protection Act 1992* as ‘presumed extinct’ are to be listed as ‘extinct’ and species previously listed as ‘endangered’ or ‘vulnerable’ are to be listed under the categories of the same name, ‘endangered’ and ‘vulnerable’, at the time of commencement of this Act.

Clause 180 - Native species of marine fish

285 This clause provides that criteria specifically for listing species of native marine fish in the categories of clause 178 may be prescribed by regulations.

Clause 181 Listing of threatened ecological communities

286 This clause provides that the Minister must establish a list of threatened ecological communities divided into three categories: ‘critically endangered’, ‘endangered’ and ‘vulnerable’. The list is to be established by instrument published in the *Gazette* (Subclause 1).

- 287 An ecological community is an assemblage of native species that (a) inhabits a particular area in nature, and (b) meets the addition criteria specified in the regulations (if any) made for the purposes of this definition (clause 528)
- 288 Subclause (3) provides that if any ecological communities are listed under Schedule 2 of the *Endangered Species Protection Act 1992* immediately prior to the date of commencement of this Act, then the list established under Subclause (1) must contain only those ecological communities and they must be included in the 'endangered' category.
- 289 Subclause (2) provides that, if satisfied that they are eligible to be listed in the category proposed, the Minister can list ecological communities in one of the three categories.

Clause 182 Critically endangered, endangered and vulnerable communities.

- 290 The three subclauses of this clause set out the circumstances under which an ecological community is eligible to be listed as 'critically endangered', 'endangered' or 'vulnerable' for the purposes of this Act.

Clause 183 Listing of key threatening processes

- 291 The Minister must, by published instrument in the *Gazette*, establish a list of key threatening processes, which must initially include only key threatening processes already listed under Schedule 3 of the *Endangered Species Protection Act* at the commencement of this Act. Threatening processes and key threatening processes are defined in clause 188.

Clause 184 Minister may amend lists

- 292 This clause provides that the Minister can amend the lists of species, ecological communities and key threatening processes by adding, deleting, moving between categories and correcting inaccuracies (subclause 1). The amendment will be by instrument published in the *Gazette* and notified in a daily newspaper circulated in each State and self-governing Territory (subclause (2)). The instrument will be disallowable and, in the case of deletions from a list, will only come into force when the period during which it could have been disallowed has expired (subclause (3)). This provision is included so that the legality of actions will not change because a species or ecological community that was removed from the list is reincluded as a result of the instrument being disallowed.
- 293 Note that in amending lists, the Minister must consider advice from the Scientific Committee (see clause 189), and satisfy various other requirements, described in clauses 186, 187, and 188.

294 An explanation of the reasons for amending a list must accompany the instrument when it is laid before each House of Parliament (subclause (4)) and the information contained in the instrument must be published according to the regulations (subclause 5).

Clause 185 Maintaining the lists in up-to-date condition

295 This clause provides that the Minister must take all reasonably practicable steps to ensure that the lists contain all species or ecological communities that are eligible to be listed.

Clause 186 Amending list of threatened native species

296 This clause provides that the Minister must not add a native species to a category unless satisfied that the species is eligible to be included in that category or delete a native species from a category unless satisfied that the species is no longer eligible to be included in that category. There are qualifications to this requirement, prescribed in subclauses (3) (4) and (5), relating to species in the 'critically endangered', 'endangered' and 'vulnerable' categories respectively. These relate to the situation where an unlisted species may so closely resemble a listed species at some part of its lifecycle that, in order to reduce the consequences of possible confusion of the two species, it is desirable to include both the species on the same list. Subclause (2) prescribes that the Minister must not consider any matter not related to the survival of the species in considering whether to add or delete a species from a list.

Clause 187 Amending list of ecological communities

297 This clause provides that the Minister must not add an ecological community to a category unless satisfied that the community is eligible to be included in that category, or delete an ecological community from a category unless satisfied that the community is no longer eligible to be included in that category. Subclause (2) prescribes that the Minister must not consider any matter not related to the survival of the ecological community in considering whether to add or delete a community from a list.

Clause 188 Amending list of key threatening processes

298 This clause provides that the Minister must not add a threatening process to the list of key threatening processes established under clause 183 unless satisfied that the threatening process is eligible to be included in that list, or delete a key threatening process from that list unless satisfied that the threatening process is no longer eligible to be included in that list (subclauses 1 and 2). Subclause 3 defines a threatening process, whilst subclause 4 sets out the circumstances under which a threatening process is eligible to be listed as a 'key threatening process' for the purposes of this Act.

299 Subclause (5) requires the Minister to consult with affected and interested States and Territories, and their agencies, as well as affected and interested Commonwealth agencies as to whether it would be feasible, effective or efficient to prepare and implement a nationally coordinated threat abatement plan before deciding whether the threatening process is eligible to be listed.

Clause 189 Minister must consider advice from Scientific Committee

300 This clause requires that before a native species, ecological community or key threatening process is added to or deleted from any list, the Minister must consider the advice of the Scientific Committee (established under Part 23, Division 1). However, the Minister is not required to consider the Committee's advice in cases where a native species listed as extinct is rediscovered in the wild (see clause 192).

301 In preparing its advice, the Committee may seek advice from a person with relevant expertise, but must not consider any matter that does not relate to the survival of the species or ecological community concerned.

302 The Committee must give its advice to the Minister within 12 months (or later date if the Minister allows) of the date the Committee received the nomination.

303 The Minister's decision must be made, and any necessary instrument amending a list must be published in the *Gazette*, within 90 days of receiving the Committee's advice on the matter(subclause 4).

304 In the period of 90 days, or until the instrument is published in the *Gazette* (whichever is earlier), a Committee member must not disclose the advice or any related information, except for the official purposes of the Committee (subclause (6)).

Clause 190 - Scientific Committee may provide advice about species or committees being threatened

305 This clause provides that the Scientific Committee may advise the Minister of actions required to protect from becoming threatened any native species or ecological community it does not consider eligible for listing under sections 178 or 181. The Minister must have regard to such advice in performing his or her functions under the Act.

Clause 191 Nomination of threatened species etc

306 This clause allows for any person to nominate a species, ecological community or threatening process for listing under this Act, and requires the Minister to forward all nominations to the Scientific Committee.

307 Subclauses (3) and (4) require that the Minister should, in accordance with any regulations, advise the person who nominated the species,

ecological community or threatening process and give reasons to that person if the Minister decides that the nominated item is not eligible to be listed, or to be listed in the nominated category. The Minister may request further information from the person making the nomination in order to assist in arriving at a decision (Subclause 5).

308 Subclause (6) provides that the Minister may reject the nomination under a number of specified circumstances.

Clause 192 Rediscovery of threatened species that were extinct

309 This clause enables the Minister to delete a species from the 'extinct' list, and if necessary add it to any of the other categories of threatened species, if the Minister is satisfied that the species has been definitely located in the wild. In this case the Minister may, but need not, obtain advice from the Scientific Committee.

Clause 193 Species posing a serious threat to human health

310 This clause empowers the Minister, if satisfied that a native species poses a serious threat to human health, to determine, by disallowable instrument published in the *Gazette*, that a species is not suitable to be included in any list. Notification of this determination should be given in a daily newspaper circulating in each State and Territory.

Clause 194 Minister to make lists available to the public

311 This clause provides that the Minister must make copies of all lists and amending instruments widely available to the public at a reasonable price, in accordance with any regulations.

Subdivision B – Permit system

Clause 195 Subdivision does not apply to cetaceans

312 This clause establishes that the Subdivision applies only to a listed threatened species that is not a cetacean (Protection of cetaceans is dealt with in Division 3).

Clause 196 Taking etc. certain listed threatened native species or listed ecological communities

313 Subclause (1) makes it an offence punishable by up to 2 year imprisonment or a fine of 1000 penalty unit of both for a person to kill, injure, take, trade, keep or move a member of a listed threatened native species or ecological community when the species or community is in a Commonwealth area (defined in D10). In this context, an action that indirectly affects a species (eg by destroying habitat or significantly disturbing members of the species) may in some circumstances lead to the injuring or taking of a species.

314 Subclause (2) makes it an offence punishable by up to 2 year imprisonment or a fine of 1000 penalty unit of both for a person to trade, keep or move a member of a listed threatened native or ecological community that was taken in a Commonwealth area. The intent of the subclause is to allow for the prosecution of a person who in relevantly deals with an illegally-taken member of a listed threatened species or ecological community, whether or not the person was involved in the taking.

315 Under certain circumstances described in clause 197, acts listed above are not considered to be an offence.

Clause 197 - Section 196 does not apply to certain acts

316 Actions which kill, take, injure, trade keep or move a member of a listed threatened species or ecological community in a Commonwealth area or taken from a Commonwealth area can occur in circumstances identified in the Bill.

317 If approval for the action has been granted by the Minister under Chapter 4 for the purposes of clause 18 (these are the provisions relating to approvals for actions with a significant impact on matters of national environmental significance), then a permit is not required. This is to prevent the need for two authorisations for the one action.

318 A permit under this act is not required if the action is taken in accordance with a permit issued under the *Great Barrier Reef Marine Park Act 1975*

Clause 198 Operation of section 18 not affected

319 This clause clarifies that clauses 196 and 197 do not influence the operation of clause 18. The scope of clause 196 is not intended to limit the scope of clause 18. Some actions which will be prohibited by clause 196 will also have a significant impact on a threatened species, and so will require approval. In such cases, a permit is not required.

Clause 199 - Failing to notify taking etc. of listed threatened species or listed ecological community

320 This clause requires a person who kills, injures, takes, trades, keeps or moves a member of a listed threatened species (other than a species included in the conservation dependent category) or listed threatened ecological community for one of the reasons listed in clause 197 to notify the Secretary of that act and specific details as required. However, a person is not required to notify the Secretary of acts allowed by a permit (unless required to by the permit conditions).

321 To avoid duplication in reporting, subclause (4) establishes that a person does not need to report under subclause (3) if that person or anyone else

must report to the Secretary on the activity under another Commonwealth law.

- 322 Subclause (5) establishes that a person is guilty of an offence if she or he breaches subclause (3) by failing to act, and prescribes a penalty of a fine of up to 100 penalty units.

Clause 200 -Application for permits

This clause entitles a person to apply to the Minister for a permit to be issued under clause 201. The application is to be made in the form, and accompanied by fees, to be specified in regulations.

Clause 201 - Minister may issue permits

- 323 The Minister may issue a permit to a person who applies under clause 200. The Minister will only consider issuing a permit if an approval under Chapter 4 is not required. The Minister must not issue a permit except in limited circumstances.

Clause 202 - Conditions of permits

- 324 This clause allows for conditions to be imposed on permits, including time limits for specified acts. The Minister may vary or revoke a condition of a permit or impose new conditions on permits in accordance with regulations.

Clause 203 - Contravening conditions of a permit

- 325 This clause imposes a fine of 300 penalty units on a permit holder who breaches a specified permit condition by doing or failing to do an act.

Clause 204 -Authorities under permits

- 326 This clause empowers a permit holder to authorise, in writing, another person to carry out on behalf of the permit holder any act authorised by the permit. This is possible only if the permit conditions allow an authority to be given, and if done in accordance with those conditions.
- 327 The permit holder who gives an authority is not prevented from operating under that permit. The permit holder must notify the Minister in writing within 14 days of giving an authority.

Clause 205 - Transfer of permits

- 328 This clause enables a permit holder to apply to the Minister for the permit to be transferred to another person. It also allows the Minister to transfer the permit. The application and transfer must be made in accordance with regulations.

Clause 206 - Suspension or cancellation of permits

329 This clause empowers the Minister to cancel a permit or suspend a permit for a specified period of time. The suspension or cancellation must be made in accordance with regulations.

Clause 207 Fees

330 This clause allows for a fee to be charged if a permit is granted or transferred, or if permit conditions are varied, revoked or further conditions imposed.

Subdivision C Miscellaneous

Clause 208 - Regulations

331 This clause provides that regulations may be made for a number of matters related to the protection and management of listed threatened species and ecological communities.

Division 2 – Migratory species

Subdivision A – Listing

Clause 209 Listed migratory species

332 This clause provides that the Minister must establish, by instrument published in the *Gazette*, a list of migratory species to which the Act will apply. The list must comprise all species listed on the Bonn Convention, JAMBA, CAMBA and any other international agreement approved by the Minister, and no others. The Minister may approve an international agreement for the purposes of this Act by instrument published in the *Gazette*, but only if satisfied that the agreement furthers the conservation of migratory species. This instrument will be disallowable for the purposes of section 46A the *Acts Interpretation Act 1901*.

Subdivision B – Permit system

Clause 210 - Subdivision does not apply to listed threatened species or cetaceans

333 This clause establishes that the subdivision applies only to a migratory species that is not included as a listed threatened species (Division 1) or a cetacean (Division 3).

Clause 211 - Taking etc. listed migratory species

334 Subclause (1) makes it an offence punishable by imprisonment for 2 years or a fine of 1000 penalty units or both for a person to kill, injure, take, trade, keep, move a member of a listed migratory species when the species is in a Commonwealth area. In this context, an action that indirectly affects a species (eg by destroying habitat or significantly

disturbing members of a species) may in some circumstances lead to the injuring or taking of a member of the species.

335 Subclause (2) makes it an offence punishable by imprisonment for 2 years or a fine of 1000 penalty units or both for a person to trade, keep or move a member of a listed migratory species that was taken in a Commonwealth area. The intent of the subclause is to allow for the prosecution of a person who in any way deals with an illegally taken listed migratory species, whether or not the person was involved in the taking.

336 Under certain circumstances described in clause 212, acts listed above are not considered to be a breach.

Clause 212 - Section 211 does not apply to certain acts

337 Actions which kill, take, injure, trade keep or move a member of a listed migratory species in a Commonwealth area or taken from a Commonwealth area can occur only in limited circumstances.

338 If approval for the action has been granted by the Minister under Chapter 4 for the purposes of clause 18 (these are the provisions relating to approvals for actions with a significant impact on matters of national environmental significance), then a permit is not required. This is to prevent the need for two authorisations for the one action.

339 A permit under this act is not required if the action is taken in accordance with a permit issued under the *Great Barrier Reef Marine Park Act 1975*

Clause 213 Operation of section 20 not affected

340 This clause clarifies that clauses 211 and 212 do not affect the operation of clause 20 relating to the requirement for approval of activities with a significant impact on a listed migratory species. The scope of clause 212 is not intended to limit the scope of clause 20. Some actions which will be prohibited by clause 211 will also have a significant impact on a threatened species, and so will require approval. In such cases, a permit is not required.

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

341 This clause requires a person who kills, injures, takes, trades, keeps, moves or otherwise interferes with a member of a migratory for one of the reasons listed in clause 212 to notify the Secretary of that act and specific details as required. However, a person is not required to notify the Secretary of acts allowed by a permit (unless required to by the permit conditions).

342 Notice must be given within 7 days of the person becoming aware that the event occurred and can be given in writing, by telephone, or by any

other electronic equipment. To avoid duplication in reporting, subclause (4) establishes that a person does not need to report under subclause (3) if that person or anyone else must report to the Secretary on the activity under another Commonwealth law.

345 Subclause (5) establishes that a person is guilty of an offence if she or he breaches subclause (3) by failing to act, and imposes a fine of 100 penalty units for the breach.

Clause 215 Application for permits

346 This clause entitles a person to apply to the Minister for a permit to be issued under clause 216. The application is to be made in the form, and accompanied by fees, to be specified in regulations.

Clause 216 Minister may issue permits

347 The Minister may issue a permit to a person who applies under clause 215. The Minister will only consider issuing a permit if an approval under Chapter 4 is not required. The Minister must not issue a permit unless satisfied that the acts specified in the permit meet the conditions laid down in the Act.

Clause 217 Conditions of permits

348 This clause allows for conditions to be imposed on permits. The Minister may vary or revoke a condition of a permit or impose new conditions on permits in accordance with regulations.

Clause 218 Contravening conditions of a permit

349 This clause provides for a fine of up to 300 penalty units on a permit holder who breaches a specified permit condition by doing or failing to do an act.

Clause 219 Authorities under permits

350 This clause empowers a permit holder to authorise, in writing, another person to carry out on behalf of the permit holder any act authorised by the permit. This is possible only if the permit conditions allow an authority to be given, and if done in accordance with those conditions.

351 The permit holder who gives an authority is not prevented from operating under that permit. The permit holder must notify the Minister in writing within 14 days of giving an authority.

Clause 220 Transfer of permits

352 This clause enables a permit holder to apply to the Minister for the permit to be transferred to another person. It also allows the Minister to

transfer the permit. The application and transfer must be made in accordance with regulations.

Clause 221 Suspension or cancellation of permits

353 This clause empowers the Minister to cancel a permit or suspend a permit for a specified period of time. The suspension or cancellation must be made in accordance with regulations.

Clause 222 Fees

354 This clause allows for a fee to be charged if a permit is granted or transferred, or if permit conditions are varied, revoked or further conditions imposed.

Subdivision C Miscellaneous

Clause 223 - Regulations

355 This clause provides that regulations may be made for a number of matters related to the protection and management of listed migratory species.

Division 3 – Whales and other cetaceans

Subdivision AA – Application of Division

Clause 224 Application of Division

356 The Division applies outside areas of Australian jurisdiction, both in international waters and foreign national jurisdictions where an activity involves an Australian citizen, Australian vessel, aircraft or members of the crew of such vessels or aircraft, the Commonwealth and Commonwealth agencies.

Subdivision A – Australian Whale Sanctuary

Clause 225 Australian Whale Sanctuary

357 This clause establishes the Australian Whale Sanctuary. This title recognises the high level of protection that is afforded cetaceans in areas under Commonwealth jurisdiction.

358 Subclause (2) sets out the areas to which the Division applies by defining waters included in the Australian Whale Sanctuary. The Sanctuary does not include the coastal waters of a State or the Northern Territory unless such waters are prescribed.

Clause 226 - Prescribed waters

359 This clause allows regulations to declare waters of a State or self-governing Territory subject to agreement of the relevant State or Territory.

Clause 227 - Coastal waters

360 Coastal waters of a State or a self-governing Territory are defined in this clause for the purposes of the Division

Clause 228 - Minister may make declaration for coastal waters

361 The Minister may make a declaration that a law of a State or Territory adequately protects cetaceans in coastal waters. The effect of this provision is that, if the coastal waters are then added to the Sanctuary, relevant provisions of the Bill will not apply in those waters.

Subdivision B – Offences

Clause 229 to 231

362 These clauses provide that, except in certain circumstances, it is an offence punishable by imprisonment for up to 2 years or a fine of up to 1000 penalty units to kill, injure, take, trade, keep, move or interfere with a cetacean (except in the coastal waters of a State or Territory), or to possess a cetacean or any part of a cetacean so killed or taken.

363 The circumstances under which these actions are not an offence are set out in the Bill

Clause 232 Action to be taken on killing, etc. cetaceans

364 This clause makes it an offence punishable by a fine of up to 100 penalty units to:

- kill, injure, take, trade, keep, move or otherwise interferes with a cetacean for one of the reasons listed in clause 231, or
- treat (ie divide, cut up, or extract a product from) a cetacean killed or taken in contravention of clause 229

without notifying the Secretary of that act and specific details as required. However, a person is not required to notify the Secretary of acts allowed by a permit (unless required to by the permit conditions).

Subdivision C – Offences relating to unlawful importation

Clause 233 to 235

365 These clauses provide that, except under certain circumstances, it is an offence, punishable by up to 2 years imprisonment or a fine or up to 1000 penalty units, to possess or treat (ie divide, cut up, or extract a product from) an illegally imported cetacean, part of a cetacean or a product derived from a cetacean.

366 The circumstances under which an offence does not occur are set out in this clause.

Subdivision D – Miscellaneous offences

Clause 236 Offences relating to foreign whaling vessels

367 This clause prohibits foreign whaling vessels entering an Australian port or an external territory, except under certain conditions. A person in charge of a foreign whaling vessel may not bring a vessel into an Australian port or external territory without first obtaining the written permission of the Minister. The offence is one of strict liability with a penalty of a fine of 500 penalty units.

368 Subclause (4) lists the circumstances under which a foreign whaling vessel is permitted to enter an Australian port. Subclause (5) defines, master and foreign whaling vessel for the purposes of the clause.

Subdivision E – Permits

Clause 237 and 238

369 These clauses empower the Minister, upon application, to issue a permit for whale watching or acts which contribute to the conservation of cetaceans, or only incidentally interfere with cetaceans.

370 A permit cannot authorise a person to kill a cetacean or take a cetacean for live display.

371 The Minister may require a formal assessment of a permit application under Chapter 4, Part 8 (see clause 165).

Clause 239 - Conditions of permits

372 This clause allows for conditions to be imposed on permits. The Minister may vary or revoke a condition of a permit or impose new conditions on permits in accordance with regulations.

Clause 240 - Contravening conditions of a permit

373 This clause provides for a permit holder who breaches a permit condition to be fined up to 300 penalty units.

Clause 241 - Authorities under permits

374 This clause empowers a permit holder to authorise, in writing, another person to carry out on behalf of the permit holder any act authorised by the permit. This is possible only if the permit conditions allow an authority to be given, and if done in accordance with those conditions.

375 The permit holder who gives an authority is not prevented from operating under that permit. The permit holder must notify the Minister in writing within 14 days of giving an authority.

Clause 242 - Transfer of permits

376 This clause enables a permit holder to apply to the Minister for the permit to be transferred to another person. It also allows the Minister to transfer the permit. The application and transfer must be made in accordance with regulations.

Clause 243 - Suspension or cancellation of permits

377 This clause empowers the Minister to cancel a permit or suspend a permit for a specified period of time. The suspension or cancellation must be made in accordance with regulations.

Clause 244 - Fees

378 This clause allows for a fee to be charged if a permit is granted or transferred, or if permit conditions are varied, revoked or further conditions imposed.

Subdivision G – Miscellaneous

Clause 245 - Minister may accredit plans of management

379 The Minister may accredit a plan of management for a fishery if the plan requires fishers to take all reasonable steps to ensure cetaceans are not killed or injured by fishing and the fishery will not adversely effect the conservation status of a population or species. If a plan is accredited fishing in accordance with the plan does not require approval under this Division.

Clause 246 - Vesting of whales in the Commonwealth

380 The Commonwealth is the owner of any cetacean that is killed or taken by any person regardless of whether the act was an offence under this Division. The Commonwealth is not liable in any matter relating to the cetacean unless the Commonwealth takes possession of the animal.

Clause 247 - Regulations

381 This clause stipulates the matters for which regulations may be made in relation to the Division.

Division 4 – Listed Marine Species

Subdivision A – Listing

Clause 248 - Listed marine species

382 This clause provides that the Minister must establish, within 30 days of the Act commencing, a list of marine species to which the part will apply. The lists are to be established by instrument published in the *Gazette* (subclause 1) and must initially contain only the species listed in subclause 2. The Minister must place a notice relating to the list of marine species in a generally circulating daily newspaper.

Clause 249 - Minister may amend list

383 This clause provides that the Minister may amend the list of marine species. The instrument will be disallowable in the case of additions or deletions (subclause (2)). Deletions will only come into force when the period during which it could have been disallowed has expired (subclause (3)). This provision is included so that the legality of actions will not change because a species or ecological community that was removed from the list is reincluded as a result of the instrument being disallowed

384 An explanation of the reasons why the list has been amended must accompany the instrument when it is laid before each House of Parliament (subclause (4)) and the information contained in an instrument should be summarised and published in accordance with regulations (subclause 5).

Clause 250 - Adding marine species to the list

385 This clause provides that the Minister may add marine species to the list only if satisfied that:

- listing is necessary to ensure the long term conservation of the species, and
- the species occurs in a Commonwealth marine area.

386 Before adding a species to the list, the Minister must consult with each Commonwealth Minister who has an interest in a Commonwealth marine area where the species occurs naturally.

Clause 251 - Minister must consider advice from Scientific Committee

387 This clause requires that before a marine species is added to or deleted from the list, the Minister must consider the advice of the Scientific Committee (established under Part 19, Division 1).

388 The Minister's decision must be made, and any necessary instrument amending a list must be published in the *Gazette*, within 90 days of receiving the Committee's advice on the matter.

389 In the period of 90 days, or until the instrument is published in the *Gazette* (whichever is earlier), a Committee member must not disclose the

advice or any related information, except for the official purposes of the Committee.

Clause 252 - Minister to make lists available to the public

390 The Minister must make copies of list and copies of all amendments to the list available for the public as described in regulations (if any), in each State and self-governing Territory.

Subdivision B – Requirements for permit for activities affecting listed marine species in Commonwealth marine areas

Clause 253 - Subdivision does not apply to members of certain species and cetaceans

391 This clause establishes that the subdivision does not apply to listed marine species that are also listed threatened species (Division 1), listed migratory species (Division 2), or cetaceans (Division 3).

Clause 254 - Taking etc. listed marine species

392 This clause makes it an offence punishable by imprisonment of up to two years or a fine of up to 1000 penalty units for a person to kill, injure, take, trade, keep, or move a member of a listed marine species when the member is in a Commonwealth area, or was taken in a Commonwealth area. In this context, an action that indirectly affects a species (for example, by destroying habitat or significantly disturbing members of the species) may in some circumstances lead to the injuring or taking of a member of a species.

Clause 255 - Section 254 does not apply to certain acts

393 Actions which kill, take, injure, trade keep or move a member of a listed marine species in a Commonwealth area or taken from a Commonwealth area can occur only in limited circumstances as specified in this clause.

Clause 256 - Failing to notify unintended taking of listed marine wildlife

394 This clause requires a person who kills, injures, takes, trades, keeps or moves a member of a listed marine species for one of the reasons listed in clause 254 to notify the Secretary of that act and specific details as required. However, a person is not required to notify the Secretary of acts allowed by a permit (unless required to by the permit conditions).

395 Subclause (4) provides that failure to notify is an offence, punishable by a fine of up to 100 penalty points.

Clause 257 - Application for permits

396 This clause entitles a person to apply to the Minister for a permit to be issued under clause 258. The application is to be made in the form, and accompanied by fees, to be specified in regulations.

Clause 258 - Minister may issue permits

397 The Minister may issue a permit to a person who applies under Clause 257. The Minister must not issue a permit unless satisfied that the acts specified in the permit meet the requirements set out in this clause.

Clause 259 - Conditions of permits

398 This clause allows for conditions to be imposed on permits. The Minister may vary or revoke a condition of a permit or impose new conditions on permits in accordance with regulations.

Clause 260 - Contravening conditions of a permit

399 This clause allows a fine of up to 100 penalty units to be imposed on a permit holder who breaches a specified permit condition by doing or failing to do an act.

Clause 261 - Authorities under permits

400 This clause empowers a permit holder to authorise, in writing, another person to carry out on behalf of the permit holder any act authorised by the permit. This is possible only if the permit conditions allow an authority to be given, and if done in accordance with those conditions.

401 The permit holder who gives an authority is not prevented from operating under that permit. The permit holder must notify the Minister in writing within 14 days of giving an authority.

Clause 262 - Transfer of permits

402 This clause enables a permit holder to apply to the Minister for the permit to be transferred to another person. It also allows the Minister to transfer the permit. The application and transfer must be made in accordance with regulations.

Clause 263 - Suspension or cancellation of permits

403 This clause empowers the Minister to cancel a permit or suspend a permit for a specified period of time. The suspension or cancellation must be made in accordance with regulations.

Clause 264 - Fees

404 This clause allows for a fee to be charged if a permit is granted or transferred, or if permit conditions are varied, revoked or further conditions imposed.

Subdivision C Miscellaneous

Clause 265 - Minister may accredit plans of management

405 This clause provides for the Minister to accredit fisheries management plans for the purpose of this Act if satisfied that the plan requires fishers

to take reasonable steps to ensure that listed marine species are not killed or injured, and the fishery to which the plan relates does not, and is not likely to, adversely affect the conservation status of listed marine species or a population of that species.

Clause 266 - Regulations

406 This clause specifies the matters that the regulations for this Division may cover.

Division 5 – Plans

Subdivision A – Recovery plans and threat abatement plans

Clause 267 Recovery plans and threat abatement plans

407 This clause requires the Minister to make recovery plans for the protection, conservation and management of every listed threatened species (except for those that are extinct or conservation dependent) and for each listed threatened ecological community, and to make a threat abatement plan to abate the effect of each listed key threatening process (subclause (1)). Subclause (2) authorises the Minister to make a written declaration that a plan prepared by a State or self-governing Territory, with such modifications as specified in the instrument, is adopted as a recovery plan or a threat abatement plan. Such a plan is to have effect as if it had been made by the Minister under subclause(1).

408 If the subject of the plan occurs on both Commonwealth and non-Commonwealth areas, or does not occur in any Commonwealth area, the cooperation of the relevant States or self-governing Territories must be sought with the aim of cooperatively developing the appropriate plan (subclause (4)).

409 Subclause (6) requires the Minister to consult with the Threatened Species Scientific Committee as prescribed in Clause 274 and with the public as prescribed in Clauses 275 and 276 before making a plan. A plan comes into force on the day that it is made or adopted, unless the Minister specifies a later date in writing (subclause (7)). Subclause (8) allows for the situation where a State or Territory may wish to use the plan for its own legal purposes.

Clause 268 Compliance with recovery plans and threat abatement plans

410 This clause provides that a Commonwealth agency (as defined in clause 528) must not take any action that contravenes a recovery plan or a threat abatement plan.

Clause 269 Implementing recovery and threat abatement plans

411 This clause requires the Commonwealth to implement a recovery plan or threat abatement plan as it applies to Commonwealth areas. Outside Commonwealth areas, the Commonwealth is required to seek to implement the plan cooperatively with the relevant States and/or Territories.

Clause 270 Content of recovery plans

412 This clause provides that the overall goal of a recovery plan must be to promote the long-term survival of the relevant species or ecological community, halt any decline in its population, and support its recovery.

413 Subclause (2) stipulates a number of considerations that must be included in a recovery plan.

414 Subclause (3) stipulates that the plan must have regard for: the objects of the Act, efficient and effective use of available resources, the principles of ecologically sustainable development (in particular minimising any adverse social and economic impacts of the plan), and relevant international obligations.

Clause 271 Content of threat abatement plans

415 This clause provides that the overall goal of a threat abatement plan must be to promote the long-term survival of the species or ecological communities affected by the key threatening process, and reduce the threat it poses to acceptable levels.

416 Subclause (2) stipulates a number of considerations that must be included in a threat abatement plan.

417 Subclause (3) stipulates that the plan must have regard for: the objects of the Act, efficient and effective use of available resources, the principles of ecologically sustainable development (in particular minimising any adverse social and economic impacts of the plan), and relevant international obligations.

Clause 272 Eradication of non-native species

418 This clause provides that where the actions specified under a recovery or threat abatement plan include the eradication of a non-native species that is endangered in the country in which its native habitat occurs, the plan must require the Commonwealth to offer to provide stock of that species to that country before the eradication proceeds.

Clause 273 Deadlines for preparing plans

419 This clause specifies that recovery plans for species or ecological communities must be prepared within:

- 2 years of listing in the critically endangered category, or

- 3 years of listing in the endangered or extinct in the wild categories, or
- 5 years of listing in the vulnerable category.

420 Threat abatement plans must be prepared within 3 years of the key threatening process being listed as such.

421 Transitional arrangements allow plans for species or threatening processes already listed in the *Endangered Species Act 1992* to be prepared according to the timeframes specified in that Act.

Clause 274 Scientific Committee to advise on scheduling of plans

422 This clause requires the Minister to obtain advice from the Scientific Committee (set up under clause 502) on the times within which, and the order in which, draft plans should be prepared so as to meet the deadlines in clause 273. The Scientific Committee is also to advise on the content of recovery and threat abatement plans. Subclauses (2) and (3) specify the matters that the Committee must take into account when giving advice on the preparation of a recovery plan or a threat abatement plan.

Clause 275 - Consultation on plans

423 This clause provides for public consultation on the content of a plan before it is finalised. The Minister must ensure that copies of the draft plan are available for purchase in each State and self-governing Territory, and that copies are given to the Scientific Committee. At least three months must be allowed for comment.

Clause 276 - Consideration of comments

424 This clause requires the Minister to consider all comments received through the consultation process outlined in clause 275. The Minister may revise the plan, taking into account any of the comments.

Clause 277 - Adoption of State plans

425 This clause provides for the adoption of State plans if the Minister is satisfied that adequate consultation has taken place and that the contents of the plan meet the requirements of plans that are made by the Minister as specified in clauses 279 (in the case of a recovery plan) or 271 (in the case of a threat abatement plan). Before adopting a plan, the Minister must obtain and consider advice from the Scientific Committee.

Clause 278 - Publication, review and variation of plans

426 This clause provides that, once the Minister has made or adopted a recovery plan or a threat abatement plan, he or she must inform the public of that fact. The clause specifies where plans are to be made

available, how notice should be given, what the notice should contain, and where the notice should be published.

Clause 279 - Variation of plans by the Minister

427 This clause requires the Minister to review each recovery and threat abatement plan at least once every 5 years and consider whether a variation is necessary. The clause sets out conditions governing variation.

428 If a plan was prepared by a State or Territory or made jointly with a State or Territory, the cooperation of that State or Territory must be sought in varying the plan.

Clause 280 - Variation by a State or Territory of joint plans and plans adopted by the Minister

429 If a State or Territory varies a plan that was adopted by the Minister or jointly made with that State or Territory, the variation has no effect for the purposes of the Act until the Minister has approved the variation. The Minister may agree to the variation only if the process laid out in the Act is followed.

Clauses 281 and 282

430 These clauses empower the Commonwealth to provide financial or other assistance to:

- a State or Territory for the purpose of making or implementing a recovery plan or a threat abatement plan, or
- a person for the purpose of implementing a recovery plan or a threat abatement plan.

431 Such conditions as the Minister, having regard to advice from the Scientific Committee (established under clause 502), thinks fit may be attached to the assistance.

432 Clause 282 sets out the matters that the Scientific Committee must take into account in advising the Minister on conditions to be attached to financial assistance.

Clause 283 - Plan may cover more than one species etc.

433 This clause provides that a recovery plan may cover more than one species and/or ecological community.

Clause 284 - Reports on preparation and implementation of plans

434 This clause provides that the Secretary must include in each annual report, a report on the making and adoption of each recovery plan and threat abatement plan during the year to which the annual report relates.

Subdivision B – Wildlife conservation plans

Clause 285 - Wildlife conservation plans

- 435 This clause provides that the Minister may make wildlife conservation plans for the protection, conservation and management of listed migratory species and listed marine species which occur in Australia or an external territory, and for a cetacean species which occurs in the Australian Whale Sanctuary (subclause 1). The Minister must not make a plan for any of these species which are listed as threatened (subclause 2). This is to ensure that only a recovery plan is made for threatened species.
- 436 The Minister may adopt a plan prepared by a State or self-governing Territory, modified as necessary, as a wildlife conservation plan.
- 437 If the subject of the plan occurs in a State or self-governing Territories, the cooperation of the relevant States or self-governing Territories must be sought with the aim of cooperatively developing the appropriate plan (subclause (5)).
- 438 Subclause (6) requires the Minister to consult with the Scientific Committee (see clause 289) and with the public (see clauses 290 and 291) before making a plan. A plan comes into force on the day that it is made or adopted, unless the Minister specifies a later date in writing (subclause 7).

Clause 286 - Acting in accordance with wildlife conservation plans

- 439 This clause requires Commonwealth agencies to take all reasonable steps to act in accordance with a wildlife conservation plan.

Clause 287 - Content of wildlife conservation plans

- 440 This clause specifies the content of wildlife conservation plans, which must provide for the research and management actions necessary to support survival of the species concerned.
- 441 Subclause (3) stipulates that the plan must have regard for: the objects of the Act, efficient and effective use of available resources, the principles of ecologically sustainable development (in particular minimising any adverse social and economic impacts of the plan), and relevant international obligations.

Clause 288 - Eradication of non-native species

- 442 This clause provides that where the actions specified under a wildlife conservation plan include the eradication of a non-native species that is endangered in a country in which its native habitat occurs, the plan must require the Commonwealth to offer to provide stock of that species to that country before the eradication proceeds.

Clause 289 - Scientific Committee to advise on scheduling of plans

443 This clause provides that the Minister may seek advice from the Scientific Committee (set up under clause 502) on the need for wildlife conservation plans, and the order in which plans should be prepared. The Minister must seek advice from the Committee on the content of the plan. The Committee must take available resources into account when giving advice on the preparation of a plan.

Clause 290 - Consultation on plans

444 This clause outlines a process for public consultation on the content of a plan, which must be followed before the plan is finalised.

Clause 291 - Consideration of comments

445 This clause requires the Minister to consider all comments received through the consultation process outlined in clause 290. The Minister may revise the plan, taking into account any of the comments.

Clause 292 - Adoption of State plans

446 This clause provides that the Minister must not adopt a plan under subclause 285(3) unless satisfied that appropriate consultation was undertaken and the contents of the plan meet the requirements of clause 287.

Clause 293 - Publication, review and variation of plans

447 This clause requires the Minister, having made or adopted a conservation plan, to inform the public of that fact. The clause specifies where plans are to be made available, how notice should be given, what the notice should contain, and where the notice should be published.

Clause 294 - Variation of plans by the Minister

448 This clause requires the Minister to review each conservation plan at least once every five years and consider whether a variation is necessary. The Minister is empowered to vary the plan, but only if the same consultation process is followed as in making a plan (see clauses 290, 291, and 293). If a plan was made jointly with a State or Territory, the cooperation of that State or Territory must be sought in varying the plan.

Clause 295 - Variation by a State or Territory of joint plans and plans adopted by the Minister

449 If a State or Territory varies a plan that was adopted by the Minister or jointly made with that State or Territory, the variation has no effect for the purposes of this Act until the Minister has approved the variation. The Minister may agree to the variation only if the processes set out in the Act are followed.

Clause 296 - Commonwealth assistance

450 This clause gives the Commonwealth a broad discretion to provide a State or self-governing Territory or an agency of a State or self-governing Territory with financial or any other type of assistance, subject to whatever conditions the Minister thinks fit, for the purpose of making wildlife conservation plans for listed marine species, listed migratory species or cetaceans.

Clause 297 - Plans may cover more than one species etc

451 This clause provides that a wildlife conservation plan may cover more than one species.

Clause 298 Reports on preparation and implementation of plans

456 This clause provides that the Secretary must include in each annual report, a report on the making and adoption of each wildlife conservation plan during the year to which the annual report relates.

Subdivision C – Miscellaneous

299 - Wildlife conservation plans cease to have effect

457 This clause provides that if a wildlife conservation plan is in place for a listed migratory or marine species, or a cetacean, and that species is subsequently listed as a threatened native species under Division 3, it ceases to have effect from the day on which a recovery plan takes effect for the species. This is to prevent more than one plan covering a listed species.

300 - Document may contain more than one plan

458 This clause allows that any or all plans made under the Division may be included in the same document and in the same instrument of adoption.

Division 6 – Access to biological resources

Clause 301 - Control of access to biological resources

459 This clause provides that the regulations may control access to biological resources (as defined in clause 528) in Commonwealth areas. Examples of access to biological resources are: collecting living material, viewing and sampling stored material, and exporting material for purposes such as taxonomic research, conservation, research, and potential commercial product development.

Division 7 – Aid for conservation of species in foreign countries

Clause 302 - Aid for conservation of species in foreign countries

460 This clause provides for the Minister to provide money to foreign governments or to organisations in foreign countries to assist in the

conservation of species covered by international agreements which Australia has ratified.

Division 8 Miscellaneous

Clause 303 - Regulations

461 This clause provides that the regulations may make provision for the conservation of biodiversity in Commonwealth areas.

Part 14 – Conservation agreements

Clause 304 - Object of this Part

462 This clause states the object of this Part. Conservation agreements are agreements whose primary object is to enhance the conservation of biodiversity. An agreement that has the primary purpose of facilitating a development - for example a deed containing the conditions for a development - is not a conservation agreement.

Clause 305 - Minister may enter into conservation agreements

463 This clause permits the Minister, on behalf of the Commonwealth, to enter into an agreement with a person for the protection, conservation and management of any listed threatened species or listed ecological communities, or their habitats, or for the abatement of processes and the mitigation or avoidance of actions that may adversely affect biodiversity. The Minister may only enter into such an agreement if he or she is satisfied that the agreement will result in a net benefit to the conservation of biodiversity and is not inconsistent with a recovery plan, threat abatement plan, or wildlife conservation plan.

Clause 306 - Content of conservation agreements

464 This clause describes some of the matters that may be included in a conservation agreement. Amongst these is a declaration that specified actions undertaken in a specified manner do not require approval under Chapter 4.

Clause 307 - Conservation agreements to be legally binding

465 This clause provides that conservation agreements are legally binding on:

- the Commonwealth,
- the person or persons with whom the Commonwealth entered the agreement, and

a successor to the whole or any part of the interest that person had in the place covered by the agreement.

Clause 308 - Variation and termination of conservation agreements

466 This clause provides for the variation and termination of conservation agreements.

Clause 309 - Publication of conservation agreements

467 This clause requires the Minister to publish conservation agreements in a specified manner as soon as practicable after the agreement is entered into. The only exception is where the Minister is satisfied that the disclosure of the agreement or part of the agreement would result in harm being done to components of biodiversity or would disclose matters that are commercial-in-confidence.

Clause 310 - List of conservation agreements

468 This clause requires the Minister to maintain a list of all conservation agreements that are currently in operation and ensure that copies of the list are readily available for purchase, at a reasonable price, in each State and self-governing Territory.

Clause 311 - Commonwealth, State and Territory laws

469 This clause provides that a conservation agreement has no effect to the extent that it is inconsistent with a law of the Commonwealth, or of a State or Territory.

Clause 312 - Minister must not give preference

470 This clause provides that the Minister must not, in exercising any powers under this Part, give preference to one State or any part thereof within the meaning of section 99 of the Constitution.

Part 20 Protected areas

Division 1 Managing World Heritage properties

Subdivision A Simplified outline of this Division

Clause 313 - Simplified outline of this Division

471 This clause provides a simplified outline of Division 1.

Subdivision B Seeking agreement on World Heritage listing

Clause 314 - Special provisions relating to World Heritage nominations

472 This clause provides that before nominating a property for inclusion in the World Heritage List kept under the World Heritage convention, the Minister must be satisfied that best efforts have been made to reach agreement on the nomination and management arrangements with:

- the owner or occupier of the property if it is owned or occupied by another person, and/or
- the relevant State or Territory government if all or part of the property lies wholly or partly in a State or Territory.

Subdivision C Notice of submission of property for listing

Clause 315 - Minister must give notice of submission of property for listing etc

473 This clause provides that the Minister must, as soon as practicable, give notice in the *Gazette* of the Commonwealth submitting a property to the World Heritage Committee, the Commonwealth changing the boundaries of a property submitted to the World Heritage Committee for inclusion in the List, or the Commonwealth withdrawing the submission of a property. the Minister must also place a notice in the *Gazette* if a property is added to or removed from the World Heritage List. The notice must specify the area included, excluded or deleted from the submission or World Heritage List.

Subdivision D Plans for listed World Heritage properties in Commonwealth areas

Clause 316 - Making plans

474 This clause requires the Minister to prepare management plans for World Heritage properties which are completely within a Commonwealth area, except where the property is:

- in a Commonwealth reserve, in which case a management plan will only be made under Chapter 5, Part 15, Division 4 and will be consistent with the World Heritage convention (see clause 387) or
- on Heard and McDonald Islands., if the Minister is satisfied that an existing plan is consistent with Australia's obligations under the World Heritage convention and Australian World Heritage management principles.

475 Management plans must be consistent with the World Heritage Convention, and with any Australian World Heritage management principles. If the Australian World Heritage management principles change, the plan must be revised so that it is consistent with the changed principles.

476 The Australian World Heritage management principles are described in clause 323.

Clause 317 - Notice of plans

477 Under this clause, the Minister must give notice of the making of a plan under clause 316, in accordance with the regulations.

Clause 318 - Compliance with plans

478 This clause provides that the Commonwealth or a Commonwealth agency must not contravene a plan made by the Minister under clause 316

Clause 319 - Review of plans every five years

479 This clause provides that a plan made by the Minister under clause 316 must be reviewed at least every 5 years. The review must consider whether the plan is consistent with any Australian World Heritage management principles in force at the time of the review.

Subdivision E - Managing World Heritage properties in States and self-governing territories

Clauses 320 - 322

480 These clauses provide that the Commonwealth must use its best endeavours to ensure that management plans consistent with the World Heritage Convention and any Australian World Heritage management principles are prepared for any World Heritage property that lies wholly or partially within an area under State or Territory jurisdiction.

481 The Commonwealth and all Commonwealth agencies must take all reasonable steps to ensure it exercises its powers and performs its duties in relation to a property in a way that is not inconsistent with the World Heritage Convention, any Australian World Heritage management principles, and any plan prepared under clause 321 in relation to any World Heritage property.

Subdivision F - Australian World Heritage management principles

Clause 323 - Australian World Heritage management principles

482 This clause enables regulations to be made prescribing Australian World Heritage management principles for the management of natural and cultural heritage as defined by the World Heritage Convention. The Minister must be satisfied that any principles to be prescribed are consistent with Australia's obligations under the World Heritage Convention.

Subdivision G Assistance for protecting declared World Heritage properties

Clause 324 - Commonwealth assistance for protecting declared World Heritage properties

483 This clause provides that the Commonwealth may give financial or other assistance for the protection or conservation of a declared World Heritage property on such conditions as the Minister thinks fit. The assistance may be given to a State, a self-governing Territory or any other

person (for example a person who owns or occupies land included in a declared World Heritage property).

Division 2

Subdivision A Simplified outline of this Division

Clause 325 - Simplified outline of this Division

484 This clause provides a simplified outline of the Division.

Subdivision B - Seeking agreement on Ramsar designation

Clause 326 - Commonwealth must seek agreement before designation

485 This clause provides that before designating a wetlands for inclusion in the List of Wetlands of International Importance kept under the Ramsar convention, the Minister must be satisfied that best efforts have been made to reach agreement on the designation and management arrangements with:

- the owner or occupier of the Wetland if it is owned or occupied by another person, and/or
- the relevant State or Territory government if all or part of the wetland lies wholly or partly in a State or Territory.

Subdivision C - Notice of designation of wetland

Clause 327 - Minister must give notice of designation of wetland etc

486 This clause provides that the Minister must give notice in the Gazette of any actions to designate sites on the List or to extend the boundaries restrict, delete, include or exclude the site from the List. However, failure to comply with this obligation does not invalidate any designation once made.

Subdivision D - Plans for listed wetlands in Commonwealth areas

Clause 328 - Making plans

487 This clauses requires the Minister to prepare management plans for Ramsar wetlands which are completely within a Commonwealth area, except where the wetland is:

- in a Commonwealth reserve, in which case a management plan will only be made under Chapter 5, Part 15, Division 4 and will be consistent with the Ramsar Convention (see clause 367) or
- on Heard and McDonald Islands., if the Minister is satisfied that an existing plan is consistent with Australia's obligations under the Ramsar convention and Australian Ramsar management principles.

488 Management plans must be consistent with the Ramsar Convention, and with Australian Ramsar management principles. If the Australian Ramsar Management Principles change, the plan must be revised so that it is consistent with the changed principles.

489 The Australian Ramsar management principles are described in clause 335.

Clause 329 - Notice of plans

490 This clause provides that, having prepared a plan, the Minister must give notice in accordance with the regulations.

Clause 330 - Compliance with plans

491 This clause provides that the Commonwealth must not contravene a management plan.

Clause 331 - Review of plans every 5 years

492 This clause requires the Minister to review plans at least every 5 years and, during the review, ensure the plan is consistent with any Australian Ramsar management principles, prescribed in the regulations, which may have been changed since the previous plan was adopted.

Subdivision E - Management of wetlands in States and self-governing Territories

Clauses 332 - 334

493 These clauses provide that the Commonwealth must use its best endeavours to ensure that management plans consistent with the Ramsar Convention and Australian Ramsar management principles are prepared for any Ramsar wetland that lies wholly or partially within an area under State or Territory jurisdiction.

494 The Commonwealth and all Commonwealth agencies must take all reasonable steps to ensure that it exercises its powers and performs its duties in relation to Ramsar wetlands in a way that is not inconsistent with the Ramsar convention, Australian Ramsar management principles, and any plan prepared under clause 333 in relation to any Ramsar wetland.

Subdivision F - Australian Ramsar management principles

Clause 335 - Australian Ramsar management principles

495 This clause provides that the Australian Ramsar management principles may be developed under regulations to guide the management of declared Ramsar wetlands. These management principles could also be used to guide the management of other wetlands.

Subdivisions G - Assistance for protecting wetlands

Clause 336 - Commonwealth assistance for protecting Ramsar wetlands

496 The clause enables the Commonwealth to provide funds or other assistance to States/Territories or another person, to help with the preparation and/or implementation of management arrangements for Ramsar sites.

Division 3 Managing Biosphere reserves

Clause 337 - Definition of *Biosphere reserve*

497 This clause defines a Biosphere reserve as an area designated for inclusion on the World Network of Biosphere reserves.

Clause 338 - Planning for management of Biosphere reserves

498 This clause empowers the Minister to make and implement a management plan for a Biosphere reserve or to cooperate with a State or Territory in the preparation and implantation of such a plan. A plan must not be inconsistent with any Australian Biosphere reserve management principles. Australian Biosphere reserve management principles are specified in regulations (see clause 340).

Clause 339 - Commonwealth activities in Biosphere reserves

499 The Commonwealth or a Commonwealth agency must take all reasonable steps to ensure that it exercises its powers and performs its duties in relation to Biosphere reserves in a way that is not inconsistent with Australian Biosphere reserve management principles or a plan prepared under clause 338.

Clause 340 - Australian Biosphere reserve management principles

500 This clause provides that Australian Biosphere reserve management principles may be specified in regulations.

Clause 341 - Commonwealth assistance for protecting Biosphere reserves

501 The clause enables the Commonwealth to provide funds or other assistance to States/Territories or another person, to help with the preparation and/or implementation of management arrangements for Biosphere reserves.

Division 4 Commonwealth Reserves

Subdivision A Simplified outline of this Division

Clause 342 - Simplified outline of this Division

502 This clause gives a simplified outline of this Division

Subdivision B Declaring and revoking Commonwealth reserves

Clause 343 - Simplified outline of this subdivision

503 This clause gives a simplified outline of this subdivision

Clause 344 - Declaring Commonwealth reserves

504 This clause specifies the areas in which a Commonwealth reserve can be proclaimed.

Clause 345 - Extent of Commonwealth reserves

505 This clause identifies the components of a reserve, that is, the portions of land and sea that can make up a reserve.

Clause 346 - Content of Proclamation declaring Commonwealth reserve

506 This clause specifies the items that a proclamation declaring a Commonwealth reserve must include.

507 Each reserve must be assigned to an IUCN category and in addition may be divided into zones, each of which is assigned to an IUCN category. The characteristics of the IUCN categories are explained in clause 347. The category to which the reserve (or zone of a reserve) is assigned has a bearing on the way it is managed.. Different and multiple uses may be permitted in a zone depending on its IUCN category and any Australian IUCN management principles for each category developed under regulations (see also clause 357). Certain activities are prohibited or restricted in certain classifications (see clause 360).

Clause 347 - Assigning Commonwealth Reserves and Zones to IUCN categories

508 This clause defines the seven IUCN categories to which Commonwealth reserves or zones within reserves may be assigned, and describes conditions under which reserves (or parts of reserves) may be assigned to each category.

Clause 348 - Australian IUCN reserve management principles

509 This clause provides that the Australian IUCN reserve management principles shall be contained in regulations.

Clause 349 - Proclamations assigning reserve or zone to wilderness area category may affect management

510 This clause provides that proclamations assigning a Commonwealth reserve or zone of a reserve to the IUCN category of wilderness area may contain provisions regulating certain acts in the absence of a management plan. These acts may only be done by the Secretary or his or her agent.

Clause 350 - Revocation and alteration of Commonwealth reserves

- 511 This clause provides that a Proclamation establishing a Commonwealth Reserve may be altered or revoked under certain specified circumstances
- 512 The intention of this provision is that changes in the area of a Commonwealth Reserve should generally be subject to Parliamentary scrutiny.
- 513 The clause also states that except as outlined above changes to the usage rights of land , sea or seabed will not effect its status as a reserve and it defines usage right.
- 514 See also clause 352 in relation to revocation of Commonwealth reserves which include indigenous people's land.

Clause 352 - Report before making Proclamation

- 515 This clause requires the Minister to consider a report prepared by the Secretary before proclamations are made under this subdivision. The processes to be followed in preparing the report, including the requirement to seek public comment, are detailed.
- 516 Subclause (6) removes the requirement to prepare a report where the proclamation deals with reserves within the Kakadu region, changes the name or purposes for which a reserve in the Kakadu region is used, reassigns an area from one Commonwealth reserve to another.

Clause 352 - What happens to Commonwealth leasehold interest when Commonwealth reserve is revoked

- 517 This clause has the purpose of ending the Commonwealth's leasehold interest in land if as a result of a proclamation under clause 350 to revoke a reserve, that land is no longer part of a Commonwealth reserve.

Subdivision C Activities in Commonwealth Reserves

Clause 353 Simplified outline of this subdivision

- 518 This clause gives a simplified outline of this subdivision

Clause 354 - Activities that may be carried on only under management plan

- 519 Subsection (1) identifies activities that must not be carried on in a reserve except in accordance with a management plan.
- 520 However, the Secretary or his or her agent may undertake these activities in the absence of a plan for limited specified purposes which primarily relate to protection of a reserve and the environment within it. This does not apply to reserves in the Kakadu or Uluru region or Jervis Bay

Territory: specific provision of management of reserves in these areas is made in clause 385.

- 521 In the case of wilderness areas, further restriction on management activities may be appropriate in the absence of a management plan: this is covered in clause 360.
- 522 The clause retains existing rights by making it subject to clause 359 which covers prior usage rights in Commonwealth reserves.
- 523 See also clause 357.

Clause 355 - Limits on mining operations in Commonwealth reserves

- 524 This clause prohibits mining operations within Commonwealth reserves unless they are carried out in accordance with a management plan for the reserve and are approved by the Governor General.
- 525 The clause is subject to existing interests and rights specified in clause 359.
- 526 clause 387 deals specifically with mining in Kakadu National Park.

Clause 356 - Regulations controlling activities in Commonwealth reserves

- 527 This clause lists some of the issues for which the Regulations may be made under the Act.

Clause 357 - Managing Commonwealth reserves while a management plan is not in operation

- 528 When a management plan is not in operation for a Commonwealth Reserve the Secretary must manage it in accordance with the relevant Australian IUCN reserve management principles and, in the case of land or seabed included in the reserve under a lease, in accordance with the conditions of the lease. The Commonwealth and Commonwealth agencies must observe the same principles in any activities in relation to the reserve. If a zone has a different IUCN category to the reserve as a whole, it is the IUCN category for the zone that prevails.

Clause 358 - Restriction on disposal of Commonwealth's interests in Commonwealth reserves

- 529 This clause prevents the Commonwealth from disposing of a usage right (as defined in subclause 350(7)) that it holds in respect of a reserve. However, provision is made for surrender of a lease where a replacement lease is provided that covers the same area.
- 530 The Commonwealth may grant leases, sub-leases or licences within a reserve, for activities in a reserve, such as tourist concessions, that are consistent with an approved plan of management.

531 The effect of this clause is not limited by the Commonwealth *Lands Acquisition Act 1989* or any other law of the Commonwealth, a State or a Territory.

Clause 359 - Prior usage rights relating to Commonwealth reserves continue to have effect

532 This clause provides for the continuation, or renewal of usage rights held prior to proclamation of a reserve, but only with the Minister's consent and subject to conditions determined by the Minister.

533 Provision is made for continuation of usage rights in relation to minerals, except in Kakadu National Park where mining operations are specifically excluded (see clause 387).

Clause 360 - Activities in wilderness areas

534 This clause restricts the activities that may be carried out in a Commonwealth Reserve (or zone of a Commonwealth Reserve) that is classified as wilderness area.

535 The intention of these provisions is that wilderness areas be maintained in a natural state. The only uses allowed are scientific research authorised by the Secretary or uses allowed by the management plan. Certain acts (listed in subclause (4)) may only be done by the Secretary or his/her agents, and these only for strict management purposes.

Subdivision D Complying with management plans for Commonwealth reserves

Clause 361 - Simplified outline of this subdivision

536 This clause gives a simplified outline of this subdivision

Clause 362 - Commonwealth and Commonwealth agencies to comply with management plan for Commonwealth reserve.

537 This clause requires the Secretary to use his or her powers to give effect to the management plan for a Commonwealth reserve. The Commonwealth must not perform its functions or exercise its powers inconsistently with a plan.

Clause 363 - Resolving disagreement between land council and Secretary over implementation of plan

538 This clause requires the Minister to appoint an independent person to review a disagreement between the Secretary and a Land Council over whether a jointly managed reserve is being managed in accordance with the management plan. The Minister must consider the report arising from the review, and give such directions to the Secretary as the Minister thinks fit.

Clause 364 - Resolving disagreement between Secretary and Board over implementation of plan

539 This clause requires the Minister to settle disagreements between the Secretary and the Board of a jointly managed reserve over the management of the reserve, and sets out a procedure for doing so.

540 In the first instance, the Minister must take steps he or she thinks fit. If this fails, the Minister must appoint an independent arbitrator to investigate the matter. The arbitrator must provide a report and recommendations to the Minister, who must then give to the Secretary and the Board directions he or she thinks appropriate, together with reasons and a copy of the arbitrator's report and recommendations.

Subdivision E Approving Management Plans for Commonwealth Reserves

Clause 365 - Simplified outline of this subdivision

541 This clause gives a simplified outline of this subdivision

Clause 366 - Obligation to prepare management plans for Commonwealth reserves

542 This clause requires the Secretary and, in the case of a jointly managed reserve, the Board, to prepare a management plan for a Commonwealth reserve as soon as possible after the reserve is declared and to ensure that a management plan continues to be in effect for the reserve.

543 Note that a Board will be appointed for a Commonwealth reserve if it includes indigenous people's land and the Minister and the relevant land council (or traditional owners) agree that a Board should be established (see Chapter 5, Part 15, Division 4, Subdivision F).

Clause 367 - Content of a management plan for a Commonwealth reserve

544 This clause prescribes the content of a management plan for a Commonwealth reserve or an area proposed to be included in a reserve.

545 A management plan must assign the reserve to an IUCN category, and may also divide the reserve into zones and assign each zone to an IUCN category.

546 The management plan must not be inconsistent with the relevant Australian IUCN reserve management principles.

547 Subclause (5) provides that a single document may contain a management plan for more than one Commonwealth Reserve. The intent is to allow one document to contain plans for reserves which are related in terms of their location, resources, or management.

Clause 368 - Steps in preparing management plans for Commonwealth reserves

- 548 Subsections (1), (2) & (5) detail the process to be followed in preparation of a plan of management. A mechanism for consulting the public and, where required, specific individuals or agencies, prior to and after preparation of the draft plan is prescribed.
- 549 Subsection (3) requires that when a management plan is prepared it must take into account, amongst other matters, management arrangements appropriate to the reserve, the interests of the owners of the land, the interests of persons who have usage rights and protection of the reserve generally.

Clause 369 - Resolving disagreements between Secretary and Board in planning process

- 550 This clause requires the Minister to settle disagreements between the Secretary and the Board of a Commonwealth reserve over the content of draft management plans, and sets out a procedure for doing so.
- 551 In the first instance, the Minister must take steps he or she thinks fit. If this fails, the Minister must appoint an independent arbitrator to investigate the matter. The arbitrator must provide a report and recommendations to the Minister, who must then give to the Secretary and the Board directions he or she thinks appropriate, together with reasons and a copy of the arbitrator's report and recommendations.
- 552 See also clause 390 for resolution of disagreements between the Secretary and the Board in relation to Kakadu, Uluru - Kata Tjuta and Booderee National Parks.

Clause 370 - Approval of management plans for Commonwealth reserves

- 553 This clause provides that Ministerial approval must be sought for plans of management and details the process to be followed.
- 554 Draft plans submitted to the Minister must be accompanied by comments received on the draft and the views of the Secretary and any Board on those comments.
- 555 The Minister may either approve the plan or return it to the Secretary and Board (if any) with comments and suggested changes, which may be incorporated into a revised draft. Following this process, the Minister is empowered to make any changes to a plan that he or she deems appropriate.

556 Before approving a plan, the Minister must be satisfied that any IUCN category assigned by the plan to the reserve or a zone within the reserve is properly assigned.

Clause 371 - Approved management plans are disallowable instruments

557 This clause provides that plans of management will be legislative instruments for the purposes of the *Acts Interpretation Act 1901*. This means that plans must be laid before both houses of parliament, and can be disallowed by a vote of either house.

558 Sub-section (3) requires that any comments, views, etc provided on a draft management plan are made available for examination by the Parliament.

Clause 372 - Amendment and revocation of management plans for Commonwealth reserves

559 This clause provides that management plans may be amended or revoked by a new management plan.

Clause 373 - Expiry of management plans for Commonwealth reserves

560 This clause provides that management plans lapse after seven years. Note that the Secretary or Board is obliged to prepare a new plan to take effect before a plan lapses (see clause 366).

Subdivision F Boards for Commonwealth Reserves on indigenous people's land

Clause 374 - Simplified outline of this subdivision

561 This clause gives a simplified outline of this subdivision

Clause 375 - Application

562 Where indigenous land is included in a Commonwealth reserve, this clause provides for the establishment of a Board

Clause 376 - Functions of a board for a Commonwealth reserve

563 This clause defines the functions of Boards in relation to the management of reserves. It also sets down the relationship of the Board with the Secretary and the Minister.

Clause 378 - Minister must establish Board if land council or traditional owners agree

564 This clause provides that the Minister must establish a Board for a Commonwealth reserve including indigenous people's land if he or she reaches agreement with the relevant land council or traditional owners

(where there is no land council) on the need for a Board, the size of the board, qualifications for membership of the Board and the name of the Board.

565 If the reserve is in a State or Territory, one member of the Board must be nominated by that State or Territory. Where a reserve consists wholly or mostly of indigenous people's land, the clause requires that a majority of the membership be indigenous people nominated by the traditional owners of the land.

Clause 379 - Altering the constitution of a Board or abolishing a Board

566 This clause empowers the Minister, subject to agreement with a land council or traditional owners, to make changes to a Board, including changing the number and qualifications of membership or abolishing the Board.

Clauses 380 to 382

567 These clauses provide for the appointment, remuneration, and removal of Board members.

Clause 383 - Procedure of a Board

568 This clause provides for regulations to be made which specify the procedural rules for a Board.

Subdivision G Special rules for some Commonwealth reserves in the Northern Territory or Jervis Bay Territory

Clause 384 - Simplified outline of this subdivision

569 This clause gives a simplified outline of this subdivision.

Clause 385 - Activities in Commonwealth Reserve in Kakadu region or Uluru region without management plan

570 In the event of a plan of management not being in force for a Commonwealth reserve in the Kakadu region, Jervis Bay Territory or Uluru region, this clause provides that the reserve may be managed by the Secretary in accordance with directions given by the Minister. This provision is different to that provided for other reserves under clause 357, ie. that in the absence of a management plan, reserves be managed by the Secretary in accordance with Australian IUCN reserve management principles.

Clause 386 - What are the Kakadu region and the Uluru region ?

571 This clause defines the Kakadu region in terms of *the Environment Protection (Alligator Rivers Region) Act 1978*. It defines the Uluru region in terms of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Clause 387 - No mining operations in Kakadu National Park

572 This clause provides that no mining operations may be conducted in Kakadu National Park.

Clause 388 - Establishment and development of townships in the Kakadu region and Uluru region

573 This clause provides for the establishment of townships in the Kakadu and Uluru - Kata Tjuta National Parks subject to certain conditions.

Clause 389 - Planning for townships

574 The purpose of this clause is to ensure the appropriate management of a township with a Commonwealth reserve.

575 The clause identifies the features that must be incorporated into a plan of management where that plan of management relates in part to a township.

Clause 390 - Special rules to protect Aboriginal interests in planning process

576 This clause applies only to Commonwealth reserves wholly or partly within the Kakadu or Uluru regions or the Jervis Bay Territory.

577 It defines the administrative procedure to be used in addressing disagreement between the Chair of the relevant land council and the Secretary (or Secretary and Board) during preparation of a management plan. It is provided to take particular account of the interests of indigenous landowners, beyond that provided by the input from the Board.

Chapter 6 – Administration

Part 16 Application of precautionary principle in decision-making

Clause 391 - Minister must consider precautionary principle in making decisions

578 This clause defines the precautionary principle and lists fourteen Clauses under which the Minister has decision-making powers. The Minister must take account of the precautionary principle in making these decisions.

Part 17 Enforcement

Division 1 Wardens, rangers and inspectors

Subdivision A Wardens and rangers

Clauses 392 to 395

579 These clauses provide for the appointment of wardens, including State or Territory officials, and the issuing of identity cards. All members and special members of the Australian Federal Police are wardens *ex officio*.

Subdivision B Inspectors

Clauses 396 to 399

580 These clauses provide for the appointment of inspectors, including State or Territory officials, and the issuing of identity cards. All members and special members of the Australian Federal Police and certain inspectors appointed under the *Great Barrier Reef Marine Park Act 1975* are inspectors *ex officio*.

Subdivision C Miscellaneous

Clause 400 Regulations may give wardens, rangers and inspectors extra powers, functions and duties

581 This clause provides that the regulations can confer functions, powers, and duties on wardens, rangers, and inspectors.

Clause 401 -Impersonating authorised officers and rangers

582 This clause makes it an offence, punishable by imprisonment for not more than 2 years or a fine not exceeding 120 units or both, to impersonate an authorised officer or ranger.

Clause 402 - Offences against authorised officers and rangers

583 This clause makes it an offence punishable by up to 7 years imprisonment or a fine of up to 420 penalty units, or both, to use or threaten violence against an authorised officer or ranger.

584 This clause makes it an offence punishable by up to 2 years imprisonment or a fine of up to 120 penalty units, or both to obstruct, intimidate, resist or hinder an authorised officer or ranger.

Division 2 - Boarding of vessels etc and access to premises by consent

Clause 403 Boarding of vessels etc by authorised officers

585 This clause describes the circumstances when an authorised officer may stop, detain and board vessels, vehicles and aircraft.

586 Subclause (3) empowers an authorised officer or the person in charge of a Commonwealth ship or Commonwealth aircraft to either bring to the nearest Australian port, or require to be brought to the nearest Australian

port any vessel in Australian waters reasonably believed to have been used or involved in committing an offence. Subclause (4) provides similar powers in relation to aircraft.

587 Subclause (5) empowers an authorised officer, for the purposes of the Act, to require the person in charge of a vehicle, vessel, aircraft or platform to give information concerning that vehicle, vessel, aircraft or platform, its crew, and any person on board.

Clause 404 - Authorised officers to produce identification

588 This clause requires an authorised officer to produce appropriate identification, unless it is impracticable to do so, when boarding a vehicle, vessel, aircraft or platform under clause 403.

Clause 405 - Access to premises

589 This clause provides that an authorised officer may exercise functions under clause 406 on a premises if those premises were entered with the consent of the occupier. The authorised officer must leave if the occupier withdraws consent

Clause 406 Powers of authorised officers

590 This clause sets out the powers of an authorised officer who boards a vehicle, vessel, aircraft or platform, or enters premises.

Division 3 - Monitoring of compliance

Clause 407 - Monitoring powers

591 This clause defines monitoring powers.

Clause 408 - Monitoring searches with occupier's consent

592 This clause empowers an authorised officer to enter premises to monitor compliance with any or all provisions of the Act or regulations, provided that:

- the occupier voluntarily gives consent, and
- the occupier is informed of his or her right to refuse consent, and
- the authorised officer produces prescribed identification on the occupier's request.

593 The authorised officer may exercise powers of seizure conferred by clause 445.

Clause 409 - Monitoring warrants

594 This clause empowers a magistrate, on application from an authorised officer, to issue a warrant to enter premises for the purpose of finding out whether any or all provisions of the Act or regulations are being

complied with. The clause sets out conditions for the issue of, and terms of, the warrant.

595 The authorised officer may exercise powers of seizure conferred by clause 445.

Clauses 410 to 411

596 These clauses provide that the occupier of premises subject of a monitoring warrant, or the occupier's apparent representative:

- must be presented with the details of the warrant, and
- is entitled to be present during the search of the premises (but must not impede the search).

Clause 412 - Announcement before entry

597 This clause requires the authorised officer named in a monitoring warrant to announce that he or she is authorised to enter the premises, and give any person at the premises the opportunity to allow entry, unless the authorised officer believes that immediate entry is necessary to ensure either the safety of a person, or the effective execution of the warrant.

Division 4 Search Warrants

Clause 413 - When search warrants can be issued

598 This clause provides that a magistrate can issue warrants for:

- the search of premises by an authorised officer, or
- an ordinary or frisk search of a person by an authorised officer if there is reasonable grounds for suspecting that evidential material will be found on the premises or person within the next 72 hours (or 48 hours if the application of the warrant was made by telephone or other electronic means - see clause 416).

599 If the authorised officer applying for the warrant believes that firearms may be required for its execution, this must be stated in the application along with the ground for the belief.

600 If the applicant for the warrant is a member or special member of the Australian Federal Police and has previously applied for a warrant relating to the same person or premises, the application must state the particulars and outcomes of these applications.

Clause 414 - Statements in warrants

601 This clause specifies what information must be contained in warrants issued under clause 413.

Clause 415 - Powers of magistrate

602 This clause sets out the places or people in relation to which a magistrate in any State or Territory may issue a warrant.

Clause 416 - Warrants by telephone or other electronic means

603 This clause provides that warrants may be applied for and issued by electronic means in urgent cases or if a delay caused by application in person would frustrate the effective execution of the warrant. The clause specifies the procedure to be followed in applying for and executing such warrants.

Clause 417- The things that are authorised by a search warrant

604 This clause specifies the actions that are authorised by a search warrant and certain limitations regarding the hours during which the warrant may be executed. Subclause (5) provides that things seized under a warrant may be made available to officers of other agencies for the purpose of investigating or prosecuting an offence to which the things relate.

Clause 418 - Availability of assistance, and use of force, in executing a warrant

605 This clause empowers the officer executing a warrant to enlist such help and use such force as may be necessary. However, a person who is not an authorised officer must not take part in searching or arresting a person.

Clause 419 - Details of warrant to be given to occupier etc

606 This clause requires the person executing a warrant to make a copy of the warrant available to the person in relation to whom or in relation to whose premises it is being executed.

Clause 420 - Specific powers available to person executing warrant

607 This clause provides that the officer executing a warrant may:

- take photographs of premises or things on premises for purposes incidental to the warrant or with the consent of the occupier of the premises;
- return to the premises to complete execution of the warrant after one hour, or longer if agreed in writing by the occupier;
- complete a search stopped by a court order if the order is revoked or reversed, and the warrant is still in force.

Clause 421 - Use of equipment to examine or process things

- 608 This clause empowers the officer executing a warrant, under certain conditions, and for the purpose of determining whether the things are eligible for seizure under the warrant, to:
- use equipment brought to the premises to examine things on the premises,
 - use equipment found at the premises to examine things on the premises, or
 - take things from the premises to a place where suitable equipment for examining them is kept.

Clause 422 - Use of electronic equipment at premises

- 609 This clause empowers the person executing, or assisting in the execution of, a warrant to operate, secure, or seize electronic equipment under certain circumstances and conditions.

Clause 423 - Compensation for damage to electronic equipment

- 610 This clause provides for compensation to be paid for any damage to electronic equipment operated with insufficient care under clauses 421 or 422.

Clause 424 - Copies of seized things to be provided

- 611 This clause requires that where readily copied originals of documents, films, or electronically stored information are seized, a copy must be provided to the occupier or his or her apparent representative. The clause specifies exceptions to this requirement.

Clause 425 - Occupier entitled to be present during search

- 612 This clause provides that the occupier of premises to be searched under a warrant, or the occupier's apparent representative, is entitled to be present during the search of the premises, but must not impede the search. This provision is subject to Part 1C of the *Crimes Act 1914*.

Clause 426- Receipts for things seized under warrant

- 613 This clause provides that a receipt must be provided for anything seized or moved under warrant.

Clause 427 - Restrictions on personal searches

- 614 This clause forbids a warrant to authorise a strip search or a search of a person's body cavities.

Clause 428 - When a thing is in the possession of a person

- 615 This clause provides that a person who has control over a thing is deemed to have possession of it, even if another person has actual possession of the thing.

Division 5 Stopping and searching aircraft, vehicles or vessels

Clause 429 - Searching of aircraft, vehicles or vessels without warrant in emergency situations

616 This clause provides that an authorised officer may stop and search an aircraft, vehicle or vessel and seize items upon it without a warrant when he or she has a reasonable suspicion that a thing relevant to an indictable offence against the Act is on board and would be concealed, lost or destroyed, and the circumstances are serious and urgent.

617 A search under this section is subject to conditions and constraints set out in subclause (4).

Division 6 Arrest and related matters

Clause 430 - Powers of arrest

618 This clause provides that an authorised officer may, without warrant, arrest a person believed to be committing an offence under the act if proceedings against the person by summons would not be effective.

619 The authorised officer must present identification (subclause (2)), and the person arrested be brought without unreasonable delay before a Justice of the Peace or other proper authority.

Clauses 431 to 433

620 These clauses empower an authorised officer who arrests a person for an offence under the Act or regulations to conduct, under certain conditions:

- a frisk search or ordinary search of the arrested person, or
- a search of the arrested person's premises,

and to seize any eligible seizable items discovered.

Division 7 Miscellaneous provisions about searches, entry to premises, warrants etc

Clause 434 - Conduct of ordinary searches and frisk searches

621 This clause provides that, if practicable, a frisk search or ordinary search of a person must be made by a person of the same sex as the person being searched.

Clause 435 - Announcement before entry

622 This clause requires the person executing a warrant to announce that he or she is authorised to enter the premises, and give any person at the premises the opportunity to allow entry, unless the person executing the warrant believes that immediate entry is necessary to ensure either the safety of a person, or the effective execution of the warrant.

Clause 436 - Offence of making false statements in warrants

623 This clause provides that it is an offence, punishable by up to 2 years imprisonment, to knowingly make a false statement in an application for a warrant.

Clause 437 - Offences relating to telephone warrants

624 This clause provides that it is an offence, punishable by up to 2 years imprisonment, to knowingly misrepresent a telephone warrant.

Clause 438 - Retention of things which are seized

625 This clause specifies the circumstances under which things seized under the Act must be returned, and the timeframes for their return.

Clause 439 - Magistrate may permit a thing to be retained

626 This clause provides that a magistrate may order that a thing seized during an emergency search under clause 429 may be retained for more than 60 days if the thing is required as evidence in proceedings or investigations that are likely to continue beyond the 60 day period. (Such a thing would normally be returned after no more than 60 days under clause 438)

Clause 440 - Law relating to legal professional privilege not affected

627 This clause provides that the law relating to legal professional privilege is not affected by this Part.

Clause 441 - Other laws about search, arrest etc not affected

628 This clause provides that this Part does not limit or exclude the operation of another law of the Commonwealth covering similar matters. The powers conferred by this Part can still operate even if there is overlap with another Commonwealth law.

Clause 442 - Persons to assist authorised officers

629 This clause provides that the owner or person in charge of vehicles, vessels, aircraft, platforms or premises that are stopped, boarded, or entered by an authorised officer under this Act must, upon request, provide reasonable assistance to the authorised officer. Failure to do so is an offence punishable by up to 12 months imprisonment. This clause does not apply if the authorised officer fails to produce prescribed identification.

Division 8 - Power to search goods, baggage etc

Clause 443 - Power to search goods, baggage etc

630 This clause empowers an authorised officer to search goods and baggage taken on or off ships or aircraft travelling from Australia to a place

outside Australia or from an external Territory to a place outside that Territory. Failure or refusal to answer a question relating to such goods or baggage is punishable by up to 60 penalty units.

Division 9- Power to ask for names and addresses

Clause 444 - Authorised person may ask for person's name and address

631 This clause empowers an authorised officer to ask a person suspected to have been involved in committing an offence against the Act or regulations for their name and address. Failing to answer, or knowingly giving a false or misleading answer, to such a question is punishable by a penalty of up to ten penalty points. This clause does not apply if the authorised officer fails to produce prescribed identification.

Division 10 Seizure and forfeiture etc

Subdivision A Seizure of goods

Clause 445 - Seizure of goods

632 This clause provides that an authorised officer may seize any goods if there is a reasonable suspicion that the goods have been used or otherwise involved in the commission of an offence against the Act or its regulations, or will provide evidence of an offence against the Act or its regulations.

Clause 446 - Retention of goods that have been seized

633 This clause sets out the conditions under which goods seized under clause 445 may be retained.

Clause 447 - Disposal of goods if there is no owner or owner cannot be located

634 This clause empowers the Secretary to dispose of goods seized under clause 446 for which there is no owner or the owner cannot be located.

Clause 448 - Release of goods that have been seized

635 This clause empowers the Secretary to authorise the release of goods seized to their owner, subject to whatever conditions he or she thinks fit.

Subdivision B - Immediate disposal of seized items

Clause 449 - Immediate disposal of seized items

636 This clause empowers the Secretary, under certain circumstances concerned with protection of the environment and public health, to authorise immediate measures to deal with a thing that is seized. These measures may include the destruction of a thing.

637 The clause also sets out steps the Secretary must take to inform the person who owns, or who had possession or control of the thing immediately before it was taken into custody, of the action taken.

638 The owner of the thing may bring an action against the Commonwealth to recover the market value of the thing on the grounds that it was not used or involved in committing an offence.

Subdivision C - Court-ordered forfeiture

Clause 450 - Court-ordered forfeiture

639 This clause empowers a court convicting a person of an offence against the Act or the regulations to order the forfeiture to the Commonwealth of any thing used or otherwise involved in the commission of the offence.

Subdivision D - Dealing in forfeited items

Clause 451 - Dealings in forfeited items

640 This clause provides that a thing forfeited under the Act becomes the property of the Commonwealth, and may be disposed of in such a manner as the Secretary sees fit, including being sold.

Subdivision E - Delivery of forfeited items to the Commonwealth

Clause 452 - Delivery of forfeited items to the Commonwealth

641 This clause provides that a thing forfeited under the Act, and not already dealt with under clause 451, must be delivered to the Secretary. A penalty of up to 2 years imprisonment applies for failure to comply with this requirement.

Subdivision F - Keeping of organisms that have been seized

Clause 453 - Keeping of organisms retained under this part

642 This clause empowers a person authorised to retain an organism to keep the organism at a place approved by the Secretary for that purpose.

Clause 454 - Recovery of costs of storing or keeping organisms

643 This clause makes the owner of a seized organism liable to pay the Commonwealth the reasonable costs incurred by the Commonwealth in the custody, transport, maintenance, or disposal of the organism. The Secretary may remit an amount owing.

Subdivision G - Rescuing goods

Clauses 455 and 456

644 These clauses provide that it is an offence punishable by up to 2 years imprisonment to:

- rescue goods seized or about to be seized under the Act, or
- stave, break, or destroy any goods in order to prevent the seizure of goods, the securing of goods, or the proof of any offence under the Act, or
- destroy documents relating to any goods in order prevent the seizure of goods, the securing of goods, or the proof of any offence under the Act.

Division 11 Powers of pursuit

Clause 457 Power to pursue persons etc.

645 This clause sets out the circumstances in which authorised officers may exercise their powers in relation to foreign vessels and foreign nationals.

Division 12 Environmental audits

Clause 458 - Environmental audits

646 The Minister may require the holder of a permit or authority to carry out an audit if the Minister believes or suspects a breach has or will occur.

Clauses 459 -462

647 These provisions deal with the appointment of an auditor, the carrying out of the audit, the nature of the audit and the audit report.

Division 13 Conservation orders

Subdivision A Simplified outline

Clause 463 - Simplified outline of this Division

648 This clause provides a simplified outline of this Division

Subdivision B Making and reviewing conservation orders

Clause 464 - 474

649 These clauses provide for the making and reviewing of conservation orders applying to activities in Commonwealth areas where the order is necessary to protect threatened species or communities.

Subdivision C Complying with conservation orders

Clause 470 - Contravening conservation orders is an offence

650 It is an offence, punishable by a fine of up to 500 penalty points, to contravene a conservation order. A person does not contravene a conservation order if he or she acts in accordance with advice from the Minister.

Division 14 Injunctions

651 This Division deals with the granting of injunctions in relation to contraventions of the Act or conservation agreements.

Division 15 Civil penalties

652 This Division provides for the making of an order that a person pay a civil penalty. A contravention of the provisions in Chapter 2 carries with it a civil penalty.

Division 16 Review of administrative decisions

Clause 487 - Extended standing for judicial review

653 This clause extends (and does not limit) the meaning of the term 'person aggrieved' in the *Administrative Decisions (Judicial Review) Act 1977*. A person or organisation will have standing under these provisions only if the person or organisation has engaged in a series of activities (including research) for the protection or conservation of the environment. There must be a genuine and consistent pattern of such activities for there to be 'a series' of activities. (See also Division 12).

Clause 488 - Application on behalf of unincorporated organisations

654 This clause provides that a person acting on behalf of an unincorporated organisation meeting certain requirements may be treated as the person aggrieved.

Division 15 Duty to provide accurate information

Clauses 481 - 486

655 Division 15 provides for various offences relating to the provision of false or misleading information. This includes the provision of false or misleading information in a Public Environment Report or an Environmental Impact Statement. An offence is only committed if the person knew or was reckless as to whether the information was false or misleading. A high standard of care is expected and 'reckless' should be interpreted in this context.

Division 16 - Review of administrative decisions

Clause 487 - Extended standing for judicial review

656 This clause extends (and does not limit) the meaning of the term person aggrieved in the *Administrative Decisions (Judicial Review) Act 1977*.

Clause 488 - Application on behalf of unincorporated organisations

657 This clause provides that a person acting on behalf of an unincorporated organisation meeting certain requirements may be treated as the person aggrieved.

Division 17 - Duty to provide accurate information

Clause 489 - Providing false or misleading information to obtain approval or permit

658 This clause makes it an offence punishable by imprisonment for up to 2 year or a fine of up to 120 penalty units, or both to provide false or misleading information in response to a requirement or request under Part 7, 8, 9, or 16.

Clause 490 - Providing false or misleading information in response to a condition or an approval or permit

659 This clause makes it an offence punishable by imprisonment for up to 2 year or a fine of up to 120 penalty units, or both to provide false or misleading information in response to a requirement to provide information for an environmental authority.

Clause 491 - Providing false or misleading information to authorised officer etc

660 This clause makes it an offence punishable by imprisonment for up to 2 year or a fine of up to 120 penalty units, or both to provide false or misleading information to an authorised officer, the Minister, an employee or officer of the Department, or a commissioner carrying out a duty under this Act.

Clause 492 - Defence of explanation of false or misleading information

661 This clause provides that having explained to the person to whom an information or document is provided how the information provided was false is a defence in relation to clauses 489, 490, and 491.

Division 18 - Liability of executive officers for corporation

Clauses 493 - 496

662 This division provides that the executive officers of a body corporate will, in certain circumstances, be liable for a contravention by the body corporate. A defence of due diligence is available.

Division 19 Infringement notices

Clause 497 - Infringement notices

663 This clause provides that the regulations may allow a person who is alleged to have committed an offence against the Act to pay a penalty to the Commonwealth instead of being prosecuted. The penalty must equal

one fifth of the maximum fine that a Court could impose on the person if found guilty.

Division 20 - Publicising contraventions

Clause 498 - Minister may publicise contravention of this Act or the regulations

664 If a person is convicted of an offence against this Act or the regulations, or found by a court to have contravened a civil penalty order, then the Minister may publicise that fact.

Part 18 Remediating environmental damage

Clause 499 - Commonwealth powers to remedy environmental damage

665 If the Minister suspects that an act or omission constitutes a contravention of the Act or the regulations, the Minister may cause to be taken such steps as he thinks proper:

- to repair or remove any condition;
- to mitigate damage; or
- to prevent any damage;

that arises or is likely to arise from the act or omission.

666 For example, if the Minister suspects that an act contravenes a condition attached to an approval for the purposes of clause 18 - and damage to the habitat of a threatened species arises - the Minister may take steps to rehabilitate that habitat for the threatened species.

667 The clause also provides that, in certain circumstances, damage to the environment, or a particular environmental condition, is taken to arise from the provision of false or misleading information.

Clause 500 - Liability for loss or damage caused by contravention

668 A person who contravenes the Act is liable to compensate another person who suffers loss as a result of the contravention. For example, if a person contravenes the Act by breaching a condition attached to an approval and this results in damage to the habitat of a critically endangered species, the person is liable to pay the Commonwealth an amount equal to the amount incurred by the Commonwealth under 499 to rehabilitate the habitat. Alternatively, if the Commonwealth did not take such action, the person would be liable to pay the owner of the land on which the habitat was damaged an amount equal to the cost of rehabilitation (even if the landholder suffers no direct economic loss).

Clause 501 - Other powers not affected

669 The sections under this division do not affect any other power or right under this or any other law.

Part 19 – Organisations

Division 1 – Establishment and functions of the Threatened Species Scientific Committee

Clause 502 - Establishment

670 This clause establishes the Committee.

Clause 503 - Functions

671 This clause sets out the functions of the Committee

Division 2 - Establishment and functions of the Biological Diversity Advisory Committee

Clause 504 -Establishment

672 This clause establishes the Committee.

Clause 505 - Functions

673 This clause sets out the functions of the Committee

Division 3 Members and procedures of Committees

Clauses 506 - 510

674 These clauses apply to the membership, terms and conditions, and procedure of the Threatened Species Scientific Committee and the Biological Diversity Advisory Committee.

Division 3 – Advisory committees

Clauses 511 - 514

675 These clauses empower the Minister to establish an advisory committee to provide advice on specified matters relating to the administration of this Act except the management of a cooperatively managed reserve.

Part 20 Delegation

Clause 515 - Delegation

676 This clause empowers both the Minister and the Secretary to delegate their powers under the Act to an officer or employee of the Department.

Part 21 Reporting

Clause 516 - Annual report on operation of Act

677 This clause provides that the Secretary must report annually to the Parliament through the Minister on the operation of the Act.

Chapter 7 - Miscellaneous

Part 22 - Miscellaneous

Clause 517 - Determination of species

678 This clause empowers the Minister to determine that a distinct population of biological entities is a species for the purposes of the Act.

Clause 518 - Non-compliance with time limits

679 This clause provides that failure by the Minister or the Secretary to comply with prescribed time limits does not invalidate any action taken under the Act or regulations.

Clause 519 - Compensation for acquisition of property

680 This clause provides for the payment of compensation in accordance with the Constitution for the acquisition of property.

Clause 520- Regulations

681 This clause enables regulations to be made under the Act.

Clause 521 - Fees and charges must not be taxes

682 This clause provides that fees and charges provided for under this Act must not amount to taxation.

Clause 522 - Financial assistance etc to be paid out of appropriated money

683 This clause provides that any financial assistance provided under the Act must be made from an appropriation of Parliament for that purpose.

Chapter 8 - Definitions

Part 23 - Definitions

Division 1 Some definitions relating to particular topics

Subdivision A - Actions

Clauses 523 and 524

684 The intention of this clause is to ensure that the assessment and approval process in this Act does not apply to a broad range of decisions that operate as indirect triggers for the *Environment Protection (Impact of Proposals) Act 1974*. Accordingly, the definition of 'action' in this clause does not cover a decision by a government to grant approval for another person to take an action. For example, a decision to approve operations for the recovery of petroleum under the *Petroleum (Submerged Lands) Act 1967* is not an 'action' - the petroleum operations are, in this case, the 'action'. Similarly, a decision not to object to a proposed foreign investment or acquisition under the *Foreign Acquisitions and Takeovers Act 1975* is not an action. The examples of decisions which are not actions are included to provide certainty - these examples are not exhaustive.

685 An action may be a series of activities carried out over a particular time period (for example, under a licence or permit). This is intended to ensure a person cannot avoid the provisions of the Act by breaking one action into many small actions.

686 The continuation of an existing use of land (existing at the time the Act commences) is not an action. An enlargement, expansion or intensification of a use is not a continuation of an existing use.

Subdivision B - Areas

Clause 525 - Commonwealth areas

687 This clause defines Commonwealth areas.

Clause 526 - Interests in areas

689 This clause provides that a person is deemed to have an interest in an area if they own, occupy, possess, manage control, or have the right to carry on a commercial activity in the area.

Subdivision B - Entities

Subdivision C - Criminal Law

Clause 527 - Convictions

690 This clause provides that a reference in the Act to a conviction of a person of an offence includes a reference to making an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

Division 2 - General list of definitions

Clause 528 - Definitions

691 This clause defines a number of terms used in the Bill.

