

1998

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Environment Protection and Biodiversity Conservation Bill 1998

No. , 1998

(Environment and Heritage)

**A Bill for an Act relating to the protection of the
environment and the conservation of biodiversity,
and for related purposes**

ISBN: 0642 376964

Contents

Chapter 1—Preliminary	1
Part 1—Preliminary	1
1 Short title	2
2 Commencement	2
3 Objects of Act	2
4 Act to bind Crown	3
5 Application of Act	4
6 Act to have effect subject to Australia’s international obligations	6
7 Application of the <i>Criminal Code</i>	6
8 Native title rights not affected	6
9 Relationship with other Acts	6
10 Relationship with State law	7
Chapter 2—Protecting the environment	8
Part 2—Simplified outline of this Chapter	8
11 Simplified outline of this Chapter	8
Part 3—Requirements for environmental approvals	9
Division 1—Requirements relating to matters of national environmental significance	9
Subdivision A—World Heritage	9
12 Requirement for approval of activities with a significant impact on a declared World Heritage property	9
13 What is a <i>declared World Heritage property</i> ?	10
14 Declaring a property to be a declared World Heritage property	10
15 Amending or revoking a declaration of a declared World Heritage property	12
Subdivision B—Wetlands of international importance	13
16 Requirement for approval of activities with a significant impact on a declared Ramsar wetland	13
17 What is a <i>declared Ramsar wetland</i> ?	14
Subdivision C—Listed threatened species and communities	16
18 Actions with significant impact on listed threatened species or endangered community prohibited without approval	16

19	Certain actions relating to listed threatened species and listed threatened ecological communities not prohibited	18
	Subdivision D—Listed migratory species	19
20	Requirement for approval of activities with a significant impact on a listed migratory species	19
	Subdivision E—Protection of the environment from nuclear actions	20
21	Requirement for approval of nuclear actions	20
22	What is a <i>nuclear action</i> ?	21
	Subdivision F—Marine environment	22
23	Requirement for approval of activities involving the marine environment	22
24	What is a <i>Commonwealth marine area</i> ?	24
	Subdivision G—Additional matters of national environmental significance	25
25	Requirement for approval of prescribed actions	25
	Division 2—Protection of the environment from proposals involving the Commonwealth	28
	Subdivision A—Protection of environment from actions involving Commonwealth land	28
26	Requirement for approval of activities involving Commonwealth land	28
27	What is <i>Commonwealth land</i> ?	29
	Subdivision B—Protection of the environment from Commonwealth activities and decisions	30
28	Requirement for approval of activities of Commonwealth agencies significantly affecting the environment	30
	Part 4—Cases in which environmental approvals are not needed	32
	Division 1—Actions covered by bilateral agreements	32
29	Actions declared by agreement not to need approval	32
30	Extended operation in State and Northern Territory waters	32
31	Extended operation in non-self-governing Territories	33
	Division 2—Actions covered by Ministerial declarations	34
32	Actions declared by Minister not to need approval	34
33	Making declaration	34
34	What is <i>matter protected</i> by a provision of Part 3?	35

35	Revoking declarations	37
36	Other rules about declarations	37
Division 3—Actions covered by conservation agreements		39
37	Actions specified as not needing approval	39
Division 4—Forestry operations in certain regions		40
Subdivision A—Regions covered by regional forest agreements		40
38	Approval not needed for forestry operations permitted by regional forest agreements	40
Subdivision B—Regions subject to a process of negotiating a regional forest agreement		40
39	Object of this Subdivision	40
40	Forestry operations in regions not yet covered by regional forest agreements	41
41	What is an <i>RFA region</i> ?	42
Subdivision C—Limits on application		43
42	This Division does not apply to some forestry operations	43
Division 5—Actions in the Great Barrier Reef Marine Park		45
43	Actions taken in accordance with permission	45
Chapter 3—Bilateral agreements		46
Part 5—Bilateral agreements		46
Division 1—Object of Part		46
44	Object of this Part	46
Division 2—Making bilateral agreements		47
Subdivision A—Power to make bilateral agreements		47
45	Minister may make agreement	47
46	Agreement may declare actions do not need approval under Part 9	48
47	Agreement may declare classes of actions do not need assessment	50
48	Other provisions of bilateral agreements	51
49	Express provision needed to affect Commonwealth areas or actions	52
Subdivision B—Prerequisites for making bilateral agreements		52
50	Minister may only enter into agreement if prescribed criteria are met	52
51	Agreements relating to declared World Heritage properties	53

52	Agreements relating to declared Ramsar wetlands	53
53	Agreements relating to listed threatened species and ecological communities	53
54	Agreements relating to migratory species	54
55	Agreements relating to nuclear actions	54
56	Agreements relating to prescribed actions	55
Division 3—Suspending and ending the effect of bilateral agreements		56
Subdivision A—Suspension and cancellation of effect		56
57	Representations about suspension or cancellation	56
58	Consultation before cancellation or suspension	57
59	Suspension or cancellation	57
60	Emergency suspension of effect of bilateral agreement	59
61	Cancellation during suspension	60
62	Revocation of notice of suspension or cancellation	60
63	Cancellation or suspension at request of other party	61
64	Cancellation or suspension of bilateral agreement does not affect certain actions	62
Subdivision B—Expiry of bilateral agreements		63
65	Expiry and review of bilateral agreements	63
Chapter 4—Environmental assessments and approvals		64
Part 6—Simplified outline of this Chapter		64
66	Simplified outline of this Chapter	64
Part 7—Deciding whether approval of actions is needed		66
Division 1—Referral of proposals to take action		66
67	What is a <i>controlled action</i> ?	66
68	Referral by person proposing to take action	66
69	State or Territory may refer proposal to Minister	66
70	Minister may request referral of proposal	67
71	Commonwealth agency may refer proposal to Minister	67
72	Form and content of referrals	68
73	Notifying person proposing to take action of referral	68
74	Inviting provision of information on referred proposal	68
Division 2—Ministerial decision whether action needs approval		70
75	Does the proposed action need approval?	70

76	Minister may request more information for making decision	71
77	Notice and reasons for decision	72
78	Reconsideration of decision	73
79	Reconsideration of decision on request by a State or Territory	76
Part 8—Assessing impacts of controlled actions		78
Division 1—Simplified outline of this Part		78
80	Simplified outline of this Part	78
Division 2—Application of this Part		79
81	Application	79
82	What are the <i>relevant impacts</i> of an action?	79
83	This Part does not apply if action covered by bilateral agreement	80
84	This Part does not apply if action covered by declaration	80
Division 3—Decision on assessment approach		83
Subdivision A—Simplified outline of this Division		83
85	Simplified outline of this Division	83
Subdivision B—Deciding on approach for assessment		83
86	Designated proponent must provide preliminary information for assessment	83
87	Minister must decide on approach for assessment	84
88	Timing of decision on assessment approach	85
89	Minister may request more information for making decision	87
90	Directing an inquiry after trying another approach	87
91	Notice of decision on assessment approach	88
Division 4—Assessment on preliminary documentation		89
92	Application	89
93	Public comment on information included in referral	89
94	Revised documentation	90
95	Assessment report	90
Division 5—Public environment reports		92
96	Application	92
97	Minister must prepare guidelines for draft public environment report	92
98	Designated proponent must invite comment on draft public environment report	93
99	Finalising public environment report	94

100	Assessment report	95
Division 6—Environmental impact statements		96
101	Application	96
102	Minister must prepare guidelines for draft environmental impact statement	96
103	Designated proponent must invite comment on draft environmental impact statement	97
104	Finalising draft environmental impact statement	98
105	Assessment report	99
Division 7—Inquiries		100
Subdivision A—Preliminary		100
106	Simplified outline	100
Subdivision B—Establishment of inquiries		100
107	Appointing commissioners and setting terms of reference	100
108	Publicising inquiry	101
Subdivision C—Conduct of inquiries		102
109	Procedure of inquiries	102
110	Inquiry to be public	102
111	Calling witnesses	103
112	Dealing with witnesses	104
113	Dealing with documents given to commission	105
114	Inspections of land, buildings and places	106
115	Entering premises by consent	107
116	Entering premises under warrant	107
117	Warrants by telephone or other electronic means	108
118	Identity cards	110
119	Contempt	110
120	Protection of commissioners and witnesses	111
Subdivision D—Inquiry reports		113
121	Timing of report	113
122	Publication of report	113
Subdivision E—Commissioners' terms and conditions		114
123	Basis of appointment	114
124	Remuneration	114
125	Leave of absence	114
126	Resignation	115
127	Termination of appointment	115
128	Disclosure of interests	116

129	Other terms and conditions	116
Part 9—Approval of actions		117
Division 1—Decisions on approval and conditions		117
Subdivision A—General		117
130	Timing of decision on approval	117
131	Inviting comments from other Ministers before decision	118
132	Requesting further information for approval decision	119
133	Grant of approval	119
134	Attaching conditions to approval	120
135	Certain approvals and conditions must not give preference	122
Subdivision B—Considerations for approvals and conditions		123
136	General considerations	123
137	Requirements for decisions about World Heritage	125
138	Requirements for decisions about Ramsar wetlands	126
139	Requirements for decisions about threatened species and endangered communities	126
140	Requirements for decisions about migratory species	126
141	Requirements for decisions about prescribed actions	127
Division 2—Requirement to comply with conditions		128
142	Compliance with conditions on approval	128
Division 3—Variation of conditions and suspension and revocation of approvals		129
143	Variation of conditions attached to approval	129
144	Suspension of approval	130
145	Revocation of approval	131
Part 10—Strategic assessments		133
Division 1—Strategic assessments generally		133
146	Minister may agree on strategic assessment	133
Division 2—Assessment of Commonwealth-managed fisheries		135
147	Simplified outline of this Division	135
148	Assessment before management plan is determined	136
149	Assessment before determination that no plan required	136
150	Assessment of all fisheries without plans must be started within 5 years	137
151	Assessment of all Torres Strait fisheries to be started within 5 years	138

152	Further assessment if impacts greater than previously assessed	138
153	Minister must make declaration if he or she endorses plan or policy	139
154	This Division does not limit Division 1	140
Part 11—Miscellaneous rules about assessments and approvals		141
Division 1—Rules about timing		141
155	This Chapter ceases to apply to lapsed proposals	141
156	General rules about time limits	142
Division 2—Actions in area offshore from a State or the Northern Territory		143
157	Actions treated as though they were in a State or the Northern Territory	143
Division 3—Exemptions		144
158	Exemptions from Part 3 and this Chapter	144
Division 4—Application of Chapter to actions that are not controlled actions		145
Subdivision A—Minister’s advice on authorising actions		145
159	Simplified outline of this Subdivision	145
160	Requirement to take account of Minister’s advice	146
161	Seeking the Minister’s advice	147
162	Assessment of the action	148
163	Providing advice	149
164	Reporting on response to advice	150
Subdivision B—Assessment of applications for permits relating to whales, dolphins and porpoises		150
165	Assessment of applications for permits relating to whales, dolphins and porpoises	150
Subdivision C—Assessment under agreement with State or Territory		151
166	This Subdivision applies if Ministers agree it should	151
167	Making an agreement	152
168	Content of an agreement	153
169	Application of a Division of Part 8	155
170	Application of Division 1 of Part 10	156

Chapter 5—Conservation of biodiversity	157
Part 12—Identifying and monitoring biodiversity and making bioregional plans	157
Division 1—Identifying and monitoring biodiversity	157
171 Identifying and monitoring biodiversity	157
172 Inventories of listed threatened species etc. on Commonwealth land	158
173 Surveys of cetaceans, listed threatened species etc. in Commonwealth marine areas	158
174 Inventories and surveys to be updated	159
175 Obligations under this Act unaffected by lack of inventories or surveys	159
Division 2—Bioregional plans	160
176 Bioregional plans	160
177 Obligations under this Act unaffected by lack of bioregional plans	160
Part 13—Species and communities	161
Division 1—Listed threatened species and ecological communities	161
Subdivision A—Listing	161
178 Listing of threatened species	161
179 Categories of threatened species	162
180 Native species of marine fish	163
181 Listing of threatened ecological communities	163
182 Critically endangered, endangered and vulnerable communities	164
183 Listing of key threatening processes	165
184 Minister may amend lists	165
185 Maintaining the lists in up-to-date condition	166
186 Amending list of threatened native species	166
187 Amending list of ecological communities	168
188 Amending list of key threatening processes	168
189 Minister must consider advice from Scientific Committee	169
190 Scientific Committee may provide advice about species or communities becoming threatened	170
191 Nomination of threatened species etc.	171
192 Rediscovery of threatened species that were extinct	172

193	Species posing a serious threat to human health	172
194	Minister to make lists available to the public	173
Subdivision B—Permit system		173
195	Subdivision does not apply to cetaceans	173
196	Taking etc. certain listed threatened species or listed ecological communities	173
197	Section 196 does not apply to certain actions	174
198	Operation of section 18 not affected	175
199	Failing to notify taking of listed threatened species or listed ecological community	175
200	Application for permits	176
201	Minister may issue permits	176
202	Conditions of permits	177
203	Contravening conditions of a permit	178
204	Authorities under permits	178
205	Transfer of permits	179
206	Suspension or cancellation of permits	179
207	Fees	179
Subdivision C—Miscellaneous		179
208	Regulations	179
Division 2—Migratory species		181
Subdivision A—Listing		181
209	Listed migratory species	181
Subdivision B—Permit system		182
210	Subdivision does not apply to members of listed threatened species or cetaceans	182
211	Taking etc. listed migratory species	182
212	Section 211 does not apply to certain actions	183
213	Operation of section 20 not affected	184
214	Failing to notify taking etc. of listed migratory species	184
215	Application for permits	185
216	Minister may issue permits	185
217	Conditions of permits	186
218	Contravening conditions of a permit	186
219	Authorities under permits	186
220	Transfer of permits	187
221	Suspension or cancellation of permits	187
222	Fees	187

Subdivision C—Miscellaneous	187
223 Regulations	187
Division 3—Whales and other cetaceans	189
Subdivision A—Application of Division	189
224 Application of Division	189
Subdivision B—Australian Whale Sanctuary	190
225 Australian Whale Sanctuary	190
226 Prescribed waters	190
227 Coastal waters	190
228 Minister may make declaration for coastal waters	191
Subdivision C—Offences	191
229 Killing etc. cetaceans	191
230 Possession of cetaceans	192
231 Sections 229 and 230 do not apply to certain actions	193
232 Action to be taken on killing etc. cetaceans	193
Subdivision D—Offences relating to unlawful importation	195
233 Possession of unlawfully imported cetaceans	195
234 Treating unlawfully imported cetaceans	195
235 Sections 233 and 234 do not apply to certain actions	195
Subdivision E—Miscellaneous offences	196
236 Offences relating to foreign whaling vessels	196
Subdivision F—Permit system	197
237 Application for permits	197
238 Minister may issue permits	197
239 Conditions of permits	198
240 Contravening conditions of a permit	199
241 Authorities under permits	199
242 Transfer of permits	200
243 Suspension or cancellation of permits	200
244 Fees	200
Subdivision G—Miscellaneous	200
245 Minister may accredit plans of management	200
246 Vesting of whales in Commonwealth	201
247 Regulations	201

Division 4—Listed marine species	202
Subdivision A—Listing	202
248 Listed marine species	202
249 Minister may amend list	202
250 Adding marine species to the list	203
251 Minister must consider advice from Scientific Committee	204
252 Minister to make lists available to the public	204
Subdivision B—Permit system	205
253 Subdivision does not apply to members of certain species and cetaceans	205
254 Taking etc. listed marine species	205
255 Section 254 does not apply to certain actions	205
256 Failing to notify unintended taking of listed marine wildlife	207
257 Application for permits	207
258 Minister may issue permits	208
259 Conditions of permits	209
260 Contravening conditions of a permit	209
261 Authorities under permits	209
262 Transfer of permits	210
263 Suspension or cancellation of permits	210
264 Fees	210
Subdivision C—Miscellaneous	210
265 Minister may accredit plans of management	210
266 Regulations	211
Division 5—Plans	212
Subdivision A—Recovery plans and threat abatement plans	212
267 Recovery plans and threat abatement plans	212
268 Compliance with recovery plans and threat abatement plans	213
269 Implementing recovery and threat abatement plans	213
270 Content of recovery plans	214
271 Content of threat abatement plans	215
272 Eradication of non-native species	216
273 Deadlines for preparing plans	216
274 Scientific Committee to advise on plans	219
275 Consultation on plans	219
276 Consideration of comments	220
277 Adoption of State plans	221
278 Publication, review and variation of plans	221

279	Variation of plans by the Minister	222
280	Variation by a State or Territory of joint plans and plans adopted by the Minister	222
281	Commonwealth assistance	223
282	Scientific Committee to advise on assistance	224
283	Plans may cover more than one species etc.	224
284	Reports on preparation and implementation of plans	225
	Subdivision B—Wildlife conservation plans	225
285	Wildlife conservation plans	225
286	Acting in accordance with wildlife conservation plans	226
287	Content of wildlife conservation plans	226
288	Eradication of non-native species	227
289	Scientific Committee to advise on scheduling of plans	228
290	Consultation on plans	228
291	Consideration of comments	229
292	Adoption of State plans	229
293	Publication, review and variation of plans	229
294	Variation of plans by the Minister	230
295	Variation by a State or Territory of joint plans and plans adopted by the Minister	231
296	Commonwealth assistance	231
297	Plans may cover more than one species etc.	232
298	Reports on preparation and implementation of plans	232
	Subdivision C—Miscellaneous	232
299	Wildlife conservation plans cease to have effect	232
300	Document may contain more than one plan	233
	Division 6—Access to biological resources	234
301	Control of access to biological resources	234
	Division 7—Aid for conservation of species in foreign countries	235
302	Aid for conservation of species in foreign countries	235
	Division 8—Miscellaneous	236
303	Regulations	236
	Part 14—Conservation agreements	237
304	Object of this Part	237
305	Minister may enter into conservation agreements	237
306	Content of conservation agreements	238
307	Conservation agreements to be legally binding	239

308	Variation and termination of conservation agreements	239
309	Publication of conservation agreements	240
310	List of conservation agreements	241
311	Commonwealth, State and Territory laws	241
312	Minister must not give preference	242
Part 15—Protected areas		243
Division 1—Managing World Heritage properties		243
Subdivision A—Simplified outline of this Division		243
313	Simplified outline of this Division	243
Subdivision B—Seeking agreement on World Heritage listing		244
314	Special provisions relating to World Heritage nominations	244
Subdivision C—Notice of submission of property for listing		244
315	Minister must give notice of submission of property for listing etc.	244
Subdivision D—Plans for listed World Heritage properties in Commonwealth areas		245
316	Making plans	245
317	Notice of plans	247
318	Compliance with plans	247
319	Review of plans every 5 years	247
Subdivision E—Managing World Heritage properties in States and self-governing Territories		248
320	Application	248
321	Co-operating to prepare and implement plans	248
322	Commonwealth responsibilities	248
Subdivision F—Australian World Heritage management principles		249
323	Australian World Heritage management principles	249
Subdivision G—Assistance for protecting World Heritage properties		249
324	Commonwealth assistance for protecting declared World Heritage properties	249
Division 2—Managing wetlands of international importance		250
Subdivision A—Simplified outline of this Division		250
325	Simplified outline of this Division	250

Subdivision B—Seeking agreement on Ramsar designation	251
326 Commonwealth must seek agreement before designation	251
Subdivision C—Notice of designation of wetland	251
327 Minister must give notice of designation of wetland etc.	251
Subdivision D—Plans for listed wetlands in Commonwealth areas	252
328 Making plans	252
329 Notice of plans	254
330 Compliance with plans	254
331 Review of plans every 5 years	254
Subdivision E—Management of wetlands in States and self-governing Territories	254
332 Application	254
333 Co-operating to prepare and implement plans	255
334 Commonwealth responsibilities	255
Subdivision F—Australian Ramsar management principles	256
335 Australian Ramsar management principles	256
Subdivision G—Assistance for protecting wetlands	256
336 Commonwealth assistance for protecting declared Ramsar wetlands	256
Division 3—Managing Biosphere reserves	257
337 Definition of <i>Biosphere reserve</i>	257
338 Planning for management of Biosphere reserves	257
339 Commonwealth activities in Biosphere reserves	257
340 Australian Biosphere reserve management principles	258
341 Commonwealth assistance for protecting Biosphere reserves	258
Division 4—Commonwealth reserves	259
Subdivision A—Simplified outline of this Division	259
342 Simplified outline of this Division	259
Subdivision B—Declaring and revoking Commonwealth reserves	260
343 Simplified outline of this Subdivision	260
344 Declaring Commonwealth reserves	260
345 Extent of Commonwealth reserve	262
346 Content of Proclamation declaring Commonwealth reserve	262
347 Assigning Commonwealth reserves and zones to IUCN categories	263
348 Australian IUCN reserve management principles	265

349	Proclamations assigning reserve or zone to wilderness area category may affect management	265
350	Revocation and alteration of Commonwealth reserves	266
351	Report before making Proclamation	267
352	What happens to Commonwealth leasehold interest when Commonwealth reserve is revoked	269
	Subdivision C—Activities in Commonwealth reserves	269
353	Simplified outline of this Subdivision	269
354	Activities that may be carried on only under management plan	270
355	Limits on mining operations in Commonwealth reserves	271
356	Regulations controlling activities relating to Commonwealth reserves	272
357	Managing Commonwealth reserves while a management plan is not in operation	275
358	Restriction on disposal of Commonwealth’s interests in Commonwealth reserves	276
359	Prior usage rights relating to Commonwealth reserves continue to have effect	276
360	Activities in wilderness areas	277
	Subdivision D—Complying with management plans for Commonwealth reserves	279
361	Simplified outline of this Subdivision	279
362	Commonwealth and Commonwealth agencies to comply with management plan for Commonwealth reserve	279
363	Resolving disagreement between land council and Secretary over implementation of plan	280
364	Resolving disagreement between Secretary and Board over implementation of plan	281
	Subdivision E—Approving management plans for Commonwealth reserves	282
365	Simplified outline of this Subdivision	282
366	Obligation to prepare management plans for Commonwealth reserves	283
367	Content of a management plan for a Commonwealth reserve	284
368	Steps in preparing management plans for Commonwealth reserves	286
369	Resolving disagreements between Secretary and Board in planning process	289
370	Approval of management plans for Commonwealth reserves	290
371	Approved management plans are disallowable instruments	292

372	Amendment and revocation of management plans for Commonwealth reserves	292
373	Expiry of management plans for Commonwealth reserves	292
Subdivision F—Boards for Commonwealth reserves on indigenous people’s land		293
374	Simplified outline of this Subdivision	293
375	Application	293
376	Functions of a Board for a Commonwealth reserve	293
377	Minister must establish Board if land council or traditional owners agree	294
378	Altering the constitution of a Board or abolishing a Board	295
379	Appointment of Board members	296
380	Terms and conditions	297
381	Remuneration	297
382	Termination of appointments of Board members	298
383	Procedure of a Board	299
Subdivision G—Special rules for some Commonwealth reserves in the Northern Territory or Jervis Bay Territory		300
384	Simplified outline of this Subdivision	300
385	Activities in Commonwealth reserve without management plan	300
386	What are the <i>Kakadu region</i> and the <i>Uluru region</i> ?	301
387	No mining operations in Kakadu National Park	301
388	Establishment and development of townships in the Kakadu region and Uluru region	302
389	Planning for townships	303
390	Special rules to protect Aboriginal interests in planning process	304
Chapter 6—Administration		307
Part 16—Application of precautionary principle in decision-making		307
391	Minister must consider precautionary principle in making decisions	307
Part 17—Enforcement		309
Division 1—Wardens, rangers and inspectors		309
Subdivision A—Wardens and rangers		309
392	Appointment of wardens and rangers	309

393	Arrangements for certain officers or employees to exercise powers etc. of wardens or rangers	309
394	Wardens <i>ex officio</i>	310
395	Identity cards	310
Subdivision B—Inspectors		310
396	Appointment of inspectors	310
397	Inspectors <i>ex officio</i>	311
398	Arrangements for State and Territory officers to be inspectors	311
399	Identity cards	312
Subdivision C—Miscellaneous		312
400	Regulations may give wardens, rangers and inspectors extra powers, functions and duties	312
401	Impersonating authorised officers and rangers	312
402	Offences against authorised officers and rangers	313
Division 2—Boarding of vessels etc. and access to premises by consent		315
403	Boarding of vessels etc. by authorised officers	315
404	Authorised officers to produce identification	317
405	Access to premises	318
406	Powers of authorised officers	318
Division 3—Monitoring of compliance		320
407	Monitoring powers	320
408	Monitoring searches with occupier's consent	320
409	Monitoring warrants	322
410	Details of monitoring warrant to be given to occupier etc.	323
411	Occupier entitled to be present during search	323
412	Announcement before entry	324
Division 4—Search warrants		325
413	When search warrants can be issued	325
414	Statements in warrants	326
415	Powers of magistrate	328
416	Warrants by telephone or other electronic means	328
417	The things that are authorised by a search warrant	330
418	Availability of assistance, and use of force, in executing a warrant	332
419	Details of warrant to be given to occupier etc.	333
420	Specific powers available to person executing warrant	334

421	Use of equipment to examine or process things	334
422	Use of electronic equipment at premises	335
423	Compensation for damage to electronic equipment	337
424	Copies of seized things to be provided	338
425	Occupier entitled to be present during search	339
426	Receipts for things seized under warrant	339
427	Restrictions on personal searches	339
428	When a thing is in the possession of a person	339
Division 5—Stopping and searching aircraft, vehicles or vessels		340
429	Searches of aircraft, vehicles or vessels without warrant in emergency situations	340
Division 6—Arrest and related matters		342
430	Powers of arrest	342
431	Power to conduct a frisk search of an arrested person	342
432	Power to conduct an ordinary search of an arrested person	343
433	Power to conduct search of arrested person's premises	343
Division 7—Miscellaneous provisions about searches, entry to premises, warrants etc.		344
434	Conduct of ordinary searches and frisk searches	344
435	Announcement before entry	344
436	Offence of making false statements in warrants	344
437	Offences relating to telephone warrants	344
438	Retention of things which are seized	345
439	Magistrate may permit a thing to be retained	346
440	Law relating to legal professional privilege not affected	347
441	Other laws about search, arrest etc. not affected	347
442	Persons to assist authorised officers	348
Division 8—Power to search goods, baggage etc.		350
443	Power to search goods, baggage etc.	350
Division 9—Power to ask for names and addresses		352
444	Authorised person may ask for person's name and address	352
Division 10—Seizure and forfeiture etc.		353
Subdivision A—Seizure of goods		353
445	Seizure of goods	353
446	Retention of goods that have been seized	353
447	Disposal of goods if there is no owner or owner cannot be located	354

448	Release of goods that have been seized	355
	Subdivision B—Immediate disposal of seized items	355
449	Immediate disposal of seized items	355
	Subdivision C—Court-ordered forfeiture	356
450	Court-ordered forfeiture	356
	Subdivision D—Dealings in forfeited items	357
451	Dealings in forfeited items	357
	Subdivision E—Delivery of forfeited items to the Commonwealth	357
452	Delivery of forfeited items to the Commonwealth	357
	Subdivision F—Keeping of organisms that have been seized	358
453	Keeping of organisms retained under this Part	358
454	Recovery of costs of storing or keeping organisms	358
	Subdivision G—Rescuing goods	359
455	Rescuing goods	359
456	Breaking or destroying goods or documents to prevent seizure etc.	359
	Division 11—Powers of pursuit	360
457	Power to pursue persons etc.	360
	Division 12—Environmental audits	361
458	Directed environmental audits	361
459	Appointment of auditor and carrying out of audit	362
460	Nature of directed environmental audit	362
461	Audit reports	363
462	Directed environmental audits do not affect other audit obligations	364
	Division 13—Conservation orders	365
	Subdivision A—Simplified outline	365
463	Simplified outline of this Division	365
	Subdivision B—Making and reviewing conservation orders	365
464	Minister may make conservation orders	365
465	Duration of conservation orders	366
466	Reviews of conservation orders	367
467	Publication of conservation orders	367
468	Application for reconsideration of conservation orders or decisions on review	368
469	Reconsideration of conservation orders and decisions on review	369

Subdivision C—Complying with conservation orders	370
470 Contravening conservation orders is an offence	370
471 Minister to consider proposed actions etc.	370
472 Contents of notices of advice	371
473 Review by the Administrative Appeals Tribunal	371
474 Assistance in complying with conservation orders	371
Division 14—Injunctions	373
475 Injunctions for contravention of the Act	373
476 Injunctions for contraventions of conservation agreements	375
477 Discharge of injunctions	376
478 No undertakings as to damages	376
479 Certain considerations for granting injunctions not relevant	376
480 Powers conferred are in addition to other powers of the Court	377
Division 15—Civil penalties	378
481 Federal Court may order person to pay pecuniary penalty for contravening civil penalty provision	378
482 What is a <i>civil penalty provision</i> ?	379
483 Contravening a civil penalty provision is not an offence	379
484 Persons involved in contravening civil penalty provision	379
485 Recovery of a pecuniary penalty	379
486 Gathering information for application for pecuniary penalty	380
Division 16—Review of administrative decisions	381
487 Extended standing for judicial review	381
488 Applications on behalf of unincorporated organisations	382
Division 17—Duty to provide accurate information	383
489 Providing false or misleading information to obtain approval or permit	383
490 Providing false or misleading information in response to a condition on an approval or permit	384
491 Providing false or misleading information to authorised officer etc.	384
492 Defence of explanation of false or misleading information	385
Division 18—Liability of executive officers for corporations	386
493 Who is an <i>executive officer</i> of a body corporate?	386
494 Civil penalties for executive officers of bodies corporate	386
495 Criminal liability of executive officers of bodies corporate	386

496	Did an executive officer take reasonable steps to prevent contravention?	387
Division 19—Infringement notices		389
497	Infringement notices	389
Division 20—Publicising contraventions		390
498	Minister may publicise contraventions of this Act or the regulations	390
Part 18—Remedying environmental damage		391
499	Commonwealth powers to remedy environmental damage	391
500	Liability for loss or damage caused by contravention	392
501	Other powers not affected	393
Part 19—Organisations		394
Division 1—Establishment and functions of the Threatened Species Scientific Committee		394
502	Establishment	394
503	Functions of the Committee	394
Division 2—Establishment and functions of the Biological Diversity Advisory Committee		395
504	Establishment	395
505	Functions of the Committee	396
Division 3—Members and procedures of Committees		397
506	Application	397
507	Terms and conditions	397
508	Remuneration	397
509	Termination of appointments of Committee members	398
510	Procedure of a Committee	399
Division 4—Advisory committees		401
511	Minister may establish advisory committees	401
512	Appointments	401
513	Members of advisory committees	401
514	Committee procedure	402
Part 20—Delegation		403
515	Delegation	403
Part 21—Reporting		404
516	Annual report on operation of Act	404

Chapter 7—Miscellaneous	405
Part 22—Miscellaneous	405
517 Determinations of species	405
518 Non-compliance with time limits	405
519 Compensation for acquisition of property	406
520 Regulations	406
521 Fees and charges must not be taxes	407
522 Financial assistance etc. to be paid out of appropriated money	408
Chapter 8—Definitions	409
Part 23—Definitions	409
Division 1—Some definitions relating to particular topics	409
Subdivision A—Actions	409
523 Actions	409
524 Things that are not <i>actions</i>	409
Subdivision B—Areas	410
525 Commonwealth areas	410
Subdivision C—Entities	411
526 Subsidiaries of bodies corporate	411
Subdivision D—Criminal law	412
527 Convictions	412
Division 2—General list of definitions	413
528 Definitions	413

1 **A Bill for an Act relating to the protection of the**
2 **environment and the conservation of biodiversity,**
3 **and for related purposes**

4 The Parliament of Australia enacts:

5 **Chapter 1—Preliminary**

6 **Part 1—Preliminary**
7

Section 1

1 **1 Short title**

2 This Act may be cited as the *Environment Protection and*
3 *Biodiversity Conservation Act 1998*.

4 **2 Commencement**

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

7 (2) If this Act does not commence under subsection (1) within the
8 period of 6 months beginning on the day on which it receives the
9 Royal Assent, it commences on the first day after the end of that
10 period.

11 **3 Objects of Act**

12 (1) The objects of this Act are:
13 (a) to provide for the protection of the environment, especially
14 those aspects of the environment that are matters of national
15 environmental significance; and
16 (b) to promote ecologically sustainable development through the
17 conservation and ecologically sustainable use of natural
18 resources; and
19 (c) to promote the conservation of biodiversity; and
20 (d) to promote a co-operative approach to the protection and
21 management of the environment involving governments, the
22 community and land-holders; and
23 (e) to assist in the co-operative implementation of Australia's
24 international environmental responsibilities.

25 (2) In order to achieve its objects, the Act:
26 (a) recognises an appropriate role for the Commonwealth in
27 relation to the environment by focussing Commonwealth
28 involvement on matters of national environmental
29 significance and on Commonwealth actions and
30 Commonwealth areas; and

- 1 (b) strengthens intergovernmental co-operation, and minimises
2 duplication, through bilateral agreements; and
3 (c) provides for the intergovernmental accreditation of
4 environmental assessment and approval processes; and
5 (d) adopts an efficient and timely Commonwealth environmental
6 assessment and approval process that will ensure activities
7 that are likely to have significant impacts on the environment
8 are properly assessed; and
9 (e) enhances Australia's capacity to ensure the conservation of
10 its biodiversity by including provisions to:
11 (i) protect native species (and in particular prevent the
12 extinction, and promote the recovery, of threatened
13 species) and ensure the conservation of migratory
14 species; and
15 (ii) establish an Australian Whale Sanctuary to ensure the
16 conservation of whales and other cetaceans; and
17 (iii) protect ecosystems by means that include the
18 establishment and management of reserves, the
19 recognition and protection of ecological communities
20 and the promotion of off-reserve conservation measures;
21 and
22 (iv) identify processes that threaten all levels of biodiversity
23 and implement plans to address these processes; and
24 (f) includes provisions to enhance the protection, conservation
25 and presentation of world heritage properties and the
26 conservation and wise use of Ramsar wetlands of
27 international importance; and
28 (g) promotes a partnership approach to environmental protection
29 and biodiversity conservation through bilateral agreements
30 with States and Territories, conservation agreements with
31 land-holders and the involvement of the community in
32 management planning.

33 **4 Act to bind Crown**

- 34 (1) This Act binds the Crown in each of its capacities.
-

Section 5

- 1 (2) This Act does not make the Crown liable to be prosecuted for an
2 offence. However, the Crown must not do anything that would be
3 an offence against this Act if done by anyone else.

4 **5 Application of Act**

5 *Extension to external Territories*

- 6 (1) This Act extends to each external Territory.

7 *Limited extraterritorial application*

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

12 *Application limited to Australians outside exclusive economic zone*

- 13 (3) A provision of this Act that has effect in relation to a place that is
14 outside the outer limits of the exclusive economic zone and is not
15 on or in the continental shelf applies only in relation to:
16 (a) Australian citizens; and
17 (b) persons who:
18 (i) are not Australian citizens; and
19 (ii) hold permanent visas under the *Migration Act 1958*; and
20 (iii) are domiciled in Australia or an external Territory; and
21 (c) corporations incorporated in Australia or an external
22 Territory; and
23 (d) the Commonwealth; and
24 (e) Commonwealth agencies; and
25 (f) Australian aircraft; and
26 (g) Australian vessels; and
27 (h) members of crews of Australian aircraft and Australian
28 vessels (including persons in charge of aircraft or vessels).

1 *Application to everyone in Australia and exclusive economic zone*

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

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

14 *Definitions*

- 15 (5) In this Act:

16 ***Australian aircraft*** means:

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

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

- 24 (a) Australia; or
25 (b) an external Territory; or
26 (c) the exclusive economic zone; or
27 (d) the continental shelf.

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

31 ***Australian vessel*** means:

Section 6

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

7 **6 Act to have effect subject to Australia's international obligations**

8 This Act has effect subject to Australia's obligations under any
9 agreement between Australia and one or more other countries.

10 **7 Application of the *Criminal Code***

11 Chapter 2 of the *Criminal Code* applies to all offences against this
12 Act.

13 **8 Native title rights not affected**

14 To avoid doubt, nothing in this Act affects the operation of section
15 211 of the *Native Title Act 1993* in relation to a provision of this
16 Act.

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

20 **9 Relationship with other Acts**

21 *Airports Act 1996 not affected*

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

23 *Antarctic Treaty (Environment Protection) Act 1980 not affected*

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

Section 10

1 *Australian Heritage Commission Act 1975 does not apply*

2 (3) The making of a decision, or the giving of an approval, under this
3 Act is not an action for the purposes of section 30 of the *Australian*
4 *Heritage Commission Act 1975*.

5 **10 Relationship with State law**

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

Section 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Chapter 2—Protecting the environment

Part 2—Simplified outline of this Chapter

11 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

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

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

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

- (a) a bilateral agreement between the Commonwealth and the State or Territory in which the action is taken;
- (b) a declaration by the Minister;
- (c) a conservation agreement.

Also, an action does not need approval if it is taken in accordance with Regional Forest Agreements or a plan for managing the Great Barrier Reef.

1

2 **Part 3—Requirements for environmental approvals**

3 **Division 1—Requirements relating to matters of national**
4 **environmental significance**

5 **Subdivision A—World Heritage**

6 **12 Requirement for approval of activities with a significant impact**
7 **on a declared World Heritage property**

- 8 (1) A person must not take an action that:
- 9 (a) has or will have a significant impact on the world heritage
 - 10 values of a declared World Heritage property; or
 - 11 (b) is likely to have a significant impact on the world heritage
 - 12 values of a declared World Heritage property.

13 Civil penalty:

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

- 16 (2) Subsection (1) does not apply to an action if:
- 17 (a) an approval of the taking of the action by the person is in
 - 18 operation under Part 9 for the purposes of this section; or
 - 19 (b) Part 4 lets the person take the action without an approval
 - 20 under Part 9 for the purposes of this section; or
 - 21 (c) there is in force a decision of the Minister under Division 2
 - 22 of Part 7 that:
 - 23 (i) the action is not a controlled action; or
 - 24 (ii) the action is a controlled action but this section is not a
 - 25 controlling provision for the action; or
 - 26 (d) the action is an action described in subsection 160(2) (which
 - 27 describes actions whose authorisation is subject to a special
 - 28 environmental assessment process), or the giving of an
 - 29 authorisation (however described) of such an action.

Chapter 2 Protecting the environment

Part 3 Requirements for environmental approvals

Division 1 Requirements relating to matters of national environmental significance

Section 13

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

5 (4) In this Act:

6 *cultural heritage* has the meaning given by the World Heritage
7 Convention.

8 *natural heritage* has the meaning given by the World Heritage
9 Convention.

10 **13 What is a declared World Heritage property?**

11 *Properties on World Heritage List*

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

14 *Properties not yet on World Heritage list*

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

19 **14 Declaring a property to be a declared World Heritage property**

20 *Making declarations*

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

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

27 (b) the Minister is satisfied that:

- 1 (i) the property has, or is likely to have, world heritage
2 values; and
3 (ii) some or all of the world heritage values of the property
4 are under threat.

5 Note 1: The Minister may make more than one declaration relating to the
6 same property. See subsection 33(1) of the *Acts Interpretation Act*
7 *1901*.

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

11 *Consulting State or Territory before making declaration*

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

17 *Consultation not required if threat is imminent*

- 18 (3) However, the Minister need not comply with subsection (2) if:
19 (a) he or she proposes to make a declaration in the circumstances
20 described in paragraph (1)(b); and
21 (b) he or she is satisfied that the threat mentioned in
22 subparagraph (1)(b)(ii) is imminent.

23 *Failure to comply with subsection (2)*

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

26 *When a declaration is in force*

- 27 (5) A declaration:
28 (a) comes into force when it is published in the *Gazette*; and
29 (b) remains in force (whether amended under section 15 or not)
30 until the earliest of the following events:

Chapter 2 Protecting the environment

Part 3 Requirements for environmental approvals

Division 1 Requirements relating to matters of national environmental significance

Section 15

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

9 *Specified period for which declaration is in force*

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

22 **15 Amending or revoking a declaration of a declared World**
23 **Heritage property**

24 *Revoking declarations specifying nominated property*

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

1 *Amending declarations specifying nominated property*

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

8 *Revoking declarations specifying property not yet nominated*

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

19 **Subdivision B—Wetlands of international importance**

20 **16 Requirement for approval of activities with a significant impact**
21 **on a declared Ramsar wetland**

- 22 (1) A person must not take an action that:
23 (a) has or will have a significant impact on the ecological
24 character of a declared Ramsar wetland; or
25 (b) is likely to have a significant impact on the ecological
26 character of a declared Ramsar wetland.

27 Civil penalty:

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

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

Chapter 2 Protecting the environment

Part 3 Requirements for environmental approvals

Division 1 Requirements relating to matters of national environmental significance

Section 17

- 1 (a) an approval of the taking of the action by the person is in
2 operation under Part 9 for the purposes of this section; or
3 (b) Part 4 lets the person take the action without an approval
4 under Part 9 for the purposes of this section; or
5 (c) there is in force a decision of the Minister under Division 2
6 of Part 7 that:
7 (i) the action is not a controlled action; or
8 (ii) the action is a controlled action but this section is not a
9 controlling provision for the action; or
10 (d) the action is an action described in subsection 160(2) (which
11 describes actions whose authorisation is subject to a special
12 environmental assessment process), or the giving of an
13 authorisation (however described) of such an action.

14 (3) In this Act:

15 *ecological character* has the same meaning as in the Ramsar
16 Convention.

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

18 *Areas designated for listing*

- 19 (1) A wetland, or part of a wetland, designated by the Commonwealth
20 under Article 2 of the Ramsar Convention for inclusion in the List
21 of Wetlands of International Importance kept under that Article is a
22 ***declared Ramsar wetland*** as long as the wetland or part is not:
23 (a) excluded by the Commonwealth from the boundaries of a
24 wetland in the List under that Article; or
25 (b) deleted by the Commonwealth from the List under that
26 Article.

27 *Areas declared by the Minister*

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

1 *Threatened wetlands of international importance*

- 2 (3) The Minister may declare a specified wetland to be a declared
3 Ramsar wetland by notice in the *Gazette* if the Minister is satisfied
4 that:
5 (a) the wetland is of international significance or is likely to be
6 of international significance because of its ecology, botany,
7 zoology, limnology or hydrology; and
8 (b) the ecological character of some or all of the wetland is under
9 threat.

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

13 *When a declaration is in force*

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

17 *Specifying period for which declaration is in force*

- 18 (5) The Minister must specify in a declaration the period for which it is
19 to be in force. The period must not be longer than the period the
20 Minister believes the Commonwealth needs to:
21 (a) decide whether the wetland is of international significance in
22 terms of ecology, botany, zoology, limnology or hydrology;
23 and
24 (b) designate the wetland for inclusion in the List of Wetlands of
25 International Importance kept under Article 2 of the Ramsar
26 Convention.

27 *Revocation of declaration of threatened wetland*

- 28 (6) The Minister must, by notice in the *Gazette*, revoke a declaration
29 of a wetland if:

Section 18

- 1 (a) the Minister is satisfied that the wetland is not of
2 international significance because of its ecology, botany,
3 zoology, limnology or hydrology; or
4 (b) the Minister is satisfied that there is no longer a threat to any
5 part of the wetland.

6 **Subdivision C—Listed threatened species and communities**

7 **18 Actions with significant impact on listed threatened species or**
8 **endangered community prohibited without approval**

9 *Species that are extinct in the wild*

- 10 (1) A person must not take an action that:
11 (a) has or will have a significant impact on a listed threatened
12 species included in the extinct in the wild category; or
13 (b) is likely to have a significant impact on a listed threatened
14 species included in the extinct in the wild category.

15 Civil penalty:

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

18 *Critically endangered species*

- 19 (2) A person must not take an action that:
20 (a) has or will have a significant impact on a listed threatened
21 species included in the critically endangered category; or
22 (b) is likely to have a significant impact on a listed threatened
23 species included in the critically endangered category.

24 Civil penalty:

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

1 *Endangered species*

- 2 (3) A person must not take an action that:
3 (a) has or will have a significant impact on a listed threatened
4 species included in the endangered category; or
5 (b) is likely to have a significant impact on a listed threatened
6 species included in the endangered category.

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

10 *Vulnerable species*

- 11 (4) A person must not take an action that:
12 (a) has or will have a significant impact on a listed threatened
13 species included in the vulnerable category; or
14 (b) is likely to have a significant impact on a listed threatened
15 species included in the vulnerable category.

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

19 *Critically endangered communities*

- 20 (5) A person must not take an action that:
21 (a) has or will have a significant impact on a listed threatened
22 ecological community included in the critically endangered
23 category; or
24 (b) is likely to have a significant impact on a listed threatened
25 ecological community included in the critically endangered
26 category.

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

Section 19

1

Endangered communities

2

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

3

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

4

5

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

6

7

8

Civil penalty:

9

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

10

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

11

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

12

13

(1) A subsection of section 18 relating to a listed threatened species

14

does not apply to an action if an approval of the taking of the

15

action by the person is in operation under Part 9 for the purposes of

16

any subsection of that section that relates to a listed threatened

17

species.

18

(2) A subsection of section 18 relating to a listed threatened ecological

19

community does not apply to an action if an approval of the taking

20

of the action by the person is in operation under Part 9 for the

21

purposes of either subsection of that section that relates to a listed

22

threatened ecological community.

23

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

24

(a) Part 4 lets the person take the action without an approval

25

under Part 9 for the purposes of the subsection; or

26

(b) there is in force a decision of the Minister under Division 2

27

of Part 7 that:

28

(i) the action is not a controlled action; or

29

(ii) the action is a controlled action but the subsection is not

30

a controlling provision for the action; or

- 1 (c) the action is an action described in subsection 160(2) (which
2 describes actions whose authorisation is subject to a special
3 environmental assessment process), or the giving of an
4 authorisation (however described) of such an action.

5 **Subdivision D—Listed migratory species**

6 **20 Requirement for approval of activities with a significant impact**
7 **on a listed migratory species**

- 8 (1) A person must not take an action that:
9 (a) has or will have a significant impact on a listed migratory
10 species; or
11 (b) is likely to have a significant impact on a listed migratory
12 species.

13 Civil penalty:

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

- 16 (2) Subsection (1) does not apply to an action if:
17 (a) an approval of the taking of the action by the person is in
18 operation under Part 9 for the purposes of this section; or
19 (b) Part 4 lets the person take the action without an approval
20 under Part 9 for the purposes of this section; or
21 (c) there is in force a decision of the Minister under Division 2
22 of Part 7 that:
23 (i) the action is not a controlled action; or
24 (ii) the action is a controlled action but this section is not a
25 controlling provision for the action; or
26 (d) the action is an action described in subsection 160(2) (which
27 describes actions whose authorisation is subject to a special
28 environmental assessment process), or the giving of an
29 authorisation (however described) of such an action.

- 1 person is in operation under Part 9 for the purposes of this
2 section; or
3 (b) Part 4 lets the constitutional corporation, Commonwealth
4 agency, Commonwealth or person take the action without an
5 approval under Part 9 for the purposes of this section; or
6 (c) there is in force a decision of the Minister under Division 2
7 of Part 7 that:
8 (i) the action is not a controlled action; or
9 (ii) the action is a controlled action but this section is not a
10 controlling provision for the action; or
11 (d) the action is an action described in subsection 160(2) (which
12 describes actions whose authorisation is subject to a special
13 environmental assessment process), or the giving of an
14 authorisation (however described) of such an action.

15 **22 What is a *nuclear action*?**

- 16 (1) In this Act:

17 ***nuclear action*** means any of the following:

- 18 (a) establishing or significantly modifying a nuclear installation
19 or a facility for storing spent nuclear fuel;
20 (b) transporting spent nuclear fuel or radioactive waste products
21 arising from reprocessing;
22 (c) establishing or significantly modifying a facility for storing
23 radioactive waste products arising from reprocessing;
24 (d) mining or milling uranium ore;
25 (e) establishing or significantly modifying a large-scale disposal
26 facility for radioactive waste;
27 (f) de-commissioning or rehabilitating any facility or area in
28 which an activity described in paragraph (a), (b), (c), (d) or
29 (e) has been undertaken;
30 (g) any other action prescribed by the regulations.

31 ***nuclear installation*** means any of the following:

- 32 (a) a nuclear fuel fabrication plant;
-

Chapter 2 Protecting the environment

Part 3 Requirements for environmental approvals

Division 1 Requirements relating to matters of national environmental significance

Section 23

- 1 (b) a nuclear reactor (including critical and subcritical
2 assemblies);
3 (c) a research reactor;
4 (d) a nuclear power plant;
5 (e) a nuclear fuel storage facility;
6 (f) an enrichment plant;
7 (g) a reprocessing facility.

8 **nuclear reactor** means a device in which a fission chain reaction
9 can be initiated, maintained and controlled.

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

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

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

16 (2) In this Act:

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

20 **Subdivision F—Marine environment**

21 **23 Requirement for approval of activities involving the marine**
22 **environment**

23 *Actions in Commonwealth marine areas affecting the environment*

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

27 Civil penalty:

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

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

2 *Actions outside Commonwealth marine areas affecting those areas*

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

5 (a) has or will have a significant impact on the environment in a
6 Commonwealth marine area; or

7 (b) is likely to have a significant impact on the environment in a
8 Commonwealth marine area.

9 Civil penalty:

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

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

12 *Fishing in State or Territory waters managed by Commonwealth*

13 (3) A person must not take in the coastal waters (as defined in the
14 *Fisheries Management Act 1991*) of a State or the Northern
15 Territory an action:

16 (a) that:

17 (i) is fishing (as defined in the *Fisheries Management Act*
18 *1991*); and

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

24 (b) that:

25 (i) has or will have a significant impact on the environment
26 in those coastal waters; or

27 (ii) is likely to have a significant impact on the environment
28 in those coastal waters.

29 Civil penalty:

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

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

Section 24

Exceptions to prohibitions

- 1
- 2 (4) Subsection (1), (2) or (3) does not apply to an action if:
- 3 (a) an approval of the taking of the action by the person is in
- 4 operation under Part 9 for the purposes of the subsection; or
- 5 (b) Part 4 lets the person take the action without an approval
- 6 under Part 9 for the purposes of the subsection; or
- 7 (c) there is in force a decision of the Minister under Division 2
- 8 of Part 7 that:
- 9 (i) the action is not a controlled action; or
- 10 (ii) the action is a controlled action but the subsection is not
- 11 a controlling provision for the action; or
- 12 (d) the person taking the action is the Commonwealth or a
- 13 Commonwealth agency; or
- 14 (e) the action is an action described in subsection 160(2) (which
- 15 describes actions whose authorisation is subject to a special
- 16 environmental assessment process), or the giving of an
- 17 authorisation (however described) of such an action.

18 Note: Section 28 regulates actions by the Commonwealth or a

19 Commonwealth agency with a significant impact on the environment.

20 *Exception—fishing in Commonwealth waters managed by State*

- 21 (5) Subsection (1) does not apply to an action if the action:
- 22 (a) is fishing (as defined in the *Fisheries Management Act 1991*);
- 23 and
- 24 (b) is included in the class of activities forming a fishery (as
- 25 defined in that Act) that is managed under the law of a State
- 26 or the Northern Territory as a result of an agreement made
- 27 under section 71 or 72 of that Act before the commencement
- 28 of this section; and
- 29 (c) is permitted under a law of the State or Territory.

30 **24 What is a *Commonwealth marine area*?**

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

- 1 (a) any waters of the sea inside the seaward boundary of the
2 exclusive economic zone, except:
3 (i) waters, rights in respect of which have been vested in a
4 State by section 4 of the *Coastal Waters (State Title) Act*
5 *1980* or in the Northern Territory by section 4 of the
6 *Coastal Waters (Northern Territory Title) Act 1980*; and
7 (ii) waters within the limits of a State or the Northern
8 Territory;
9 (b) the seabed under waters covered by paragraph (a);
10 (c) airspace over waters covered by paragraph (a);
11 (d) any waters over the continental shelf, except:
12 (i) waters, rights in respect of which have been vested in a
13 State by section 4 of the *Coastal Waters (State Title) Act*
14 *1980* or in the Northern Territory by section 4 of the
15 *Coastal Waters (Northern Territory Title) Act 1980*; and
16 (ii) waters within the limits of a State or the Northern
17 Territory; and
18 (iii) waters covered by paragraph (a);
19 (e) any seabed under waters covered by paragraph (d);
20 (f) any airspace over waters covered by paragraph (d).

21 **Subdivision G—Additional matters of national environmental**
22 **significance**

23 **25 Requirement for approval of prescribed actions**

- 24 (1) A person must not take an action that is prescribed by the
25 regulations for the purposes of this subsection.
- 26 Civil penalty:
- 27 (a) for an individual—5,000 penalty units;
28 (b) for a body corporate—50,000 penalty units.
- 29 (2) Subsection (1) does not apply to an action if:
30 (a) an approval of the taking of the action by the person is in
31 operation under Part 9 for the purposes of this section; or
-

Chapter 2 Protecting the environment

Part 3 Requirements for environmental approvals

Division 1 Requirements relating to matters of national environmental significance

Section 25

- 1 (b) Part 4 lets the person take the action without an approval
2 under Part 9 for the purposes of this section; or
3 (c) there is in force a decision of the Minister under Division 2
4 of Part 7 that:
5 (i) the action is not a controlled action; or
6 (ii) the action is a controlled action but this section is not a
7 controlling provision for the action; or
8 (d) the action is an action described in subsection 160(2) (which
9 describes actions whose authorisation is subject to a special
10 environmental assessment process), or the giving of an
11 authorisation (however described) of such an action.
- 12 (3) Before the Governor-General makes regulations prescribing an
13 action for the purposes of subsection (1), the Minister must be
14 satisfied that:
15 (a) all the States, the Australian Capital Territory and the
16 Northern Territory have been given a reasonable opportunity
17 to comment on the proposal to prescribe:
18 (i) the action for the purposes of subsection (1); and
19 (ii) the things that are matter protected by this section (for
20 the purposes of section 34) in relation to the action; and
21 (b) the proposed regulations are not inconsistent with Australia's
22 obligations under an agreement with one or more other
23 countries.
- 24 (4) The regulations may prescribe different things as matter protected
25 by this section in relation to different actions prescribed for the
26 purposes of subsection (1).
- 27 (5) This section applies only to actions:
28 (a) taken in a Territory or a place acquired by the
29 Commonwealth for public purposes (within the meaning of
30 section 52 of the Constitution); or
31 (b) taken in a Commonwealth marine area; or
32 (c) taken for the purpose of trade or commerce:
33 (i) between Australia and another country; or
-

- 1 (ii) between 2 States; or
2 (iii) between a State and a Territory; or
3 (iv) between 2 Territories; or
4 (d) taken by a constitutional corporation; or
5 (e) whose regulation is appropriate and adapted to give effect to
6 Australia's obligation under an agreement with one or more
7 other countries.

Section 26

1

2

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

3

4

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

5

6

**26 Requirement for approval of activities involving Commonwealth
land**

7

8

Actions on Commonwealth land

9

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

10

11

12

Civil penalty:

13

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

14

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

15

Actions outside Commonwealth land affecting that land

16

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

17

- (a) has or will have a significant impact on the environment on
Commonwealth land; or

18

19

- (b) is likely to have a significant impact on the environment on
Commonwealth land.

20

21

Civil penalty:

22

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

23

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

24

Exceptions to prohibitions

25

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

26

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

27

- 1 (b) Part 4 lets the person take the action without an approval
2 under Part 9 for the purposes of the subsection; or
3 (c) the action is one declared by the Minister in writing to be an
4 action to which the subsection does not apply; or
5 (d) there is in force a decision of the Minister under Division 2
6 of Part 7 that:
7 (i) the action is not a controlled action; or
8 (ii) the action is a controlled action but the subsection is not
9 a controlling provision for the action; or
10 (e) the action is an action described in subsection 160(2) (which
11 describes actions whose authorisation is subject to a special
12 environmental assessment process), or the giving of an
13 authorisation (however described) of such an action; or
14 (f) the person taking the action is the Commonwealth or a
15 Commonwealth agency.

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

18 *Declarations of actions*

- 19 (4) The Minister may make a written declaration that an action is an
20 action to which subsection (1) or subsection (2) does not apply, but
21 only if he or she is satisfied that it is necessary in the interests of:
22 (a) Australia's defence or security; or
23 (b) preventing, mitigating or dealing with a national emergency.

24 **27 What is *Commonwealth land*?**

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

Section 28

1 **Subdivision B—Protection of the environment from**
2 **Commonwealth activities and decisions**

3 **28 Requirement for approval of activities of Commonwealth**
4 **agencies significantly affecting the environment**

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

9 Civil penalty:

- 10 (a) for a Commonwealth agency that is an individual—1,000
11 penalty units;
12 (b) for a Commonwealth agency that is a body corporate—
13 10,000 penalty units.

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

- 16 (2) Subsection (1) does not apply to an action if:
17 (a) an approval of the taking of the action by the Commonwealth
18 or Commonwealth agency is in operation under Part 9 for the
19 purposes of this section; or
20 (b) Part 4 lets the Commonwealth or Commonwealth agency
21 take the action without an approval under Part 9 for the
22 purposes of this section; or
23 (c) the action is one declared by the Minister in writing to be an
24 action to which this section does not apply; or
25 (d) there is in force a decision of the Minister under Division 2
26 of Part 7 that:
27 (i) the action is not a controlled action; or
28 (ii) the action is a controlled action but this section is not a
29 controlling provision for the action; or
30 (e) the action is an action described in subsection 160(2) (which
31 describes actions whose authorisation is subject to a special

- 1 environmental assessment process), or the giving of an
2 authorisation (however described) of such an action.
- 3 (3) The Minister may make a written declaration that actions are
4 actions to which this section does not apply, but only if he or she is
5 satisfied that it is necessary in the interests of:
- 6 (a) Australia's defence or security; or
7 (b) preventing, mitigating or dealing with a national emergency.
- 8 (4) The Minister may make a written declaration that all actions, or a
9 specified class of actions, taken by a specified Commonwealth
10 agency are actions to which this section does not apply.
- 11 (5) The Minister may make a declaration under subsection (4) relating
12 to a Commonwealth agency's actions only if he or she is satisfied
13 that, in taking the actions to which the declaration relates, the
14 agency must comply with the law of a State or Territory dealing
15 with environmental protection.

Section 29

1

2 **Part 4—Cases in which environmental approvals**
3 **are not needed**

4 **Division 1—Actions covered by bilateral agreements**

5 **29 Actions declared by agreement not to need approval**

6 (1) A person may take an action described in a provision of Part 3
7 without an approval under Part 9 for the purposes of the provision
8 if:

9 (a) the action is taken in a State or self-governing Territory; and

10 (b) the action is one of a class of actions declared by a bilateral
11 agreement between the Commonwealth and the State or
12 Territory not to require approval under Part 9 for the
13 purposes of the provision; and

14 (c) the provision of the bilateral agreement making the
15 declaration is in operation in relation to the action.

16 Note 1: Section 46 deals with bilateral agreements making declarations
17 described in paragraph (1)(b).

18 Note 2: Division 3 of Part 5 explains how the operation of a bilateral
19 agreement may be ended or suspended. Also, under section 49,
20 bilateral agreements do not operate in relation to actions in
21 Commonwealth areas, or actions taken by the Commonwealth or a
22 Commonwealth agency, unless they expressly provide that they do.

23 (2) If the action is to be taken in 2 or more States or self-governing
24 Territories, this section does not operate unless it operates in
25 relation to each of those States or Territories.

26 **30 Extended operation in State and Northern Territory waters**

27 (1) Section 29 applies to an action taken on, over or under the seabed
28 vested in a State by section 4 of the *Coastal Waters (State Title)*
29 *Act 1980* in the same way that it applies to an action taken in the
30 State.

1 (2) Section 29 applies to an action taken on, over or under the seabed
2 vested in the Northern Territory by section 4 of the *Coastal Waters*
3 *(Northern Territory Title) Act 1980* in the same way that it applies
4 to an action taken in the Territory.

5 (3) Section 29 applies to an action taken in a Commonwealth marine
6 area to which a law of a State or self-governing Territory is applied
7 by a Commonwealth law or by an agreement or arrangement under
8 a Commonwealth law (other than this Act) in the same way as it
9 applies to an action in the State or Territory, if the provision of the
10 bilateral agreement has effect in relation to the area.

11 Note: A provision of a bilateral agreement only has effect in relation to a
12 Commonwealth area if the agreement expressly provides that it does.
13 See section 49.

14 **31 Extended operation in non-self-governing Territories**

15 A person may take an action described in a provision of Part 3
16 without an approval under Part 9 for the purposes of the provision
17 if:

- 18 (a) the action is taken in a Territory (the *action Territory*) that is
19 not a self-governing Territory; and
20 (b) an Act providing for the government of the action Territory
21 provides that some or all of the law of a State or
22 self-governing Territory is in force in the action Territory as
23 a law of the Territory; and
24 (c) the action is one of a class of actions declared by a bilateral
25 agreement between the Commonwealth and the State or
26 self-governing Territory not to require approval under Part 9
27 for the purposes of the provision of Part 3; and
28 (d) the bilateral agreement specifies that the provision of the
29 agreement making the declaration has effect in relation to
30 actions in the action Territory; and
31 (e) the provision of the bilateral agreement making the
32 declaration is in operation in relation to the action.

33 Note: Division 3 of Part 5 explains how the operation of a bilateral
34 agreement may be ended or suspended.

Section 32

1

2

Division 2—Actions covered by Ministerial declarations

3

32 Actions declared by Minister not to need approval

4

A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

5

6

7

(a) the action is one of a class of actions declared by the Minister under section 33 not to require approval under Part 9 for the purposes of the provision; and

8

9

10

(b) the declaration is in operation when the action is taken.

11

33 Making declaration

12

Declarations

13

- (1) The Minister may declare in writing that actions in a class of actions identified wholly or partly by reference to the fact that their taking has been approved by the Commonwealth or a specified Commonwealth agency in a specified manner do not require approval under Part 9 for the purposes of a specified provision of Part 3.

14

15

16

17

18

19

Note: Section 35 provides for revocation of declarations.

20

Prerequisite to making declaration

21

- (2) The Minister may make a declaration relating to a provision of Part 3 only if he or she is satisfied that the Commonwealth or Commonwealth agency specified as approving the taking of actions in a specified class will, in deciding whether or not to approve an action in the class, consider the impacts the action:

22

23

24

25

26

(a) has or will have; or

27

(b) is likely to have;

28

on the matter protected by the provision.

1 *Specified manner of approval*

2 (3) A declaration may specify a manner of approving the taking of
3 actions by reference to another instrument (whether or not it exists
4 when the declaration is made), including:

5 (a) a law of the Commonwealth that meets the standards (if any)
6 prescribed by the regulations; and

7 (b) an instrument (including a management plan or agreement)
8 that is made under a law of the Commonwealth and that
9 meets the standards (if any) prescribed by the regulations;
10 and

11 (c) a policy, plan or program that the Minister has endorsed
12 under an agreement made under Part 10 (which deals with
13 strategic assessment).

14 This does not limit the ways in which a declaration may specify a
15 manner of approving the taking of an action or a manner of taking
16 an action.

17 *Strategic assessments*

18 (4) The Minister may declare a class of actions approved in
19 accordance with a policy, plan or program endorsed under an
20 agreement made under Part 10 not to require approval under Part 9
21 for the purposes of a provision of Part 3 only if he or she is
22 satisfied that the report under the agreement adequately addresses
23 the impacts all the actions in the class:

24 (a) have or will have; or

25 (b) are likely to have;

26 on the matter protected by the provision.

27 **34 What is *matter protected* by a provision of Part 3?**

28 The *matter protected* by a provision of Part 3 specified in column 2
29 of an item of the following table is the thing specified in column 3
30 of the item.
31

Chapter 2 Protecting the environment

Part 4 Cases in which environmental approvals are not needed

Division 2 Actions covered by Ministerial declarations

Section 34

Matter protected by provisions of Part 3		
Item	Provision	Matter protected
1	section 12	the world heritage values of a declared World Heritage property
2	section 16	the ecological character of a declared Ramsar wetland
3	subsection 18(1)	a listed threatened species in the extinct in the wild category
4	subsection 18(2)	a listed threatened species in the critically endangered category
5	subsection 18(3)	a listed threatened species in the endangered category
6	subsection 18(4)	a listed threatened species in the vulnerable category
7	subsection 18(5)	a listed threatened ecological community in the critically endangered category
8	subsection 18(6)	a listed threatened ecological community in the endangered category
9	section 20	a listed migratory species
10	section 21	the environment
11	subsection 23(1)	the environment
12	subsection 23(2)	the environment in a Commonwealth marine area
13	subsection 23(3)	the environment in the coastal waters (as defined in the <i>Fisheries Management Act 1991</i>) in which the action is taken of the State or Territory
14	section 25	a thing prescribed by the regulations for the purposes of this item in relation to an action to which section 25 applies
15	subsection 26(1)	the environment
16	subsection 26(2)	the environment on Commonwealth land

Matter protected by provisions of Part 3

Item	Provision	Matter protected
-------------	------------------	-------------------------

17	section 28	the environment
----	------------	-----------------

1 **35 Revoking declarations**

2 *Revoking declarations*

- 3 (1) The Minister may, by written instrument, revoke a declaration
4 made under section 33.

5 *Revocation does not affect some actions*

- 6 (2) If:

7 (a) before the revocation of a declaration made under section 33,
8 an action could be taken without approval under Part 9
9 because its taking had been approved by the Commonwealth
10 or a Commonwealth agency in a particular manner as
11 specified in the declaration; and

12 (b) the declaration is revoked;
13 this Act continues to operate in relation to the action as if the
14 declaration had not been revoked.

15 **36 Other rules about declarations**

16 *Minister must not give preference*

- 17 (1) In making or revoking a declaration under section 33 or 35 relating
18 to an action taken:

19 (a) by a person for the purposes of trade between Australia and
20 another country or between 2 States; or

21 (b) by a constitutional corporation;

22 the Minister must not give preference (within the meaning of
23 section 99 of the Constitution) to one State or part of a State over
24 another State or part of a State.

Chapter 2 Protecting the environment

Part 4 Cases in which environmental approvals are not needed

Division 2 Actions covered by Ministerial declarations

Section 36

1 *Publishing declarations*

2 (2) The Minister must publish a declaration made under section 33, or
3 an instrument under section 35 revoking a declaration, in
4 accordance with the regulations.

1

2 **Division 3—Actions covered by conservation agreements**

3 **37 Actions specified as not needing approval**

4 A person may take an action described in a provision of Part 3
5 without an approval under Part 9 for the purposes of the provision
6 if:

- 7 (a) the action is specified in a conservation agreement as not
8 requiring approval under Part 9 for the purposes of that
9 provision; and
10 (b) the agreement is in operation when the action is taken; and
11 (c) the person is:
12 (i) a party to the agreement; or
13 (ii) a successor to all or part of a usage right that a party to
14 the agreement had in relation to an area that was subject
15 to the agreement.

Section 38

1

2 **Division 4—Forestry operations in certain regions**

3 **Subdivision A—Regions covered by regional forest agreements**

4 **38 Approval not needed for forestry operations permitted by**
5 **regional forest agreements**

6 (1) A person may undertake RFA forestry operations without approval
7 under Part 9 for the purposes of a provision of Part 3 if they are
8 undertaken in accordance with a regional forest agreement.

9 Note: This section does not apply to some forestry operations. See section
10 42.

11 (2) In this Act:

12 *regional forest agreement* has the same meaning as in the
13 *Regional Forest Agreements Act 1998*.

14 *RFA forestry operations* has the same meaning as in the *Regional*
15 *Forest Agreements Act 1998*.

16 **Subdivision B—Regions subject to a process of negotiating a**
17 **regional forest agreement**

18 **39 Object of this Subdivision**

19 The purpose of this Subdivision is to ensure that an approval under
20 Part 9 is not required for forestry operations in a region for which a
21 process (involving the conduct of a comprehensive regional
22 assessment, assessment under the *Environment Protection (Impact*
23 *of Proposals) Act 1974* and protection of the environment through
24 agreements between the Commonwealth and the relevant State and
25 conditions on licences for the export of wood chips) of developing
26 and negotiating a regional forest agreement is being, or has been,
27 carried on.

1 **40 Forestry operations in regions not yet covered by regional forest**
2 **agreements**

- 3 (1) A person may undertake forestry operations in an RFA region in a
4 State or Territory without approval under Part 9 for the purposes of
5 a provision of Part 3 if there is not a regional forest agreement in
6 force for any of the region.

7 Note 1: This section does not apply to some forestry operations. See section
8 42.

9 Note 2: The process of making a regional forest agreement is subject to
10 assessment under the *Environment Protection (Impact of Proposals)*
11 *Act 1974*, as continued by the *Environmental Reform (Consequential*
12 *Provisions) Act 1998*.

- 13 (2) In this Act:

14 *forestry operations* has the same meaning as in the *Regional*
15 *Forest Agreements Act 1998*.

- 16 (3) Subsection (1) does not operate in relation to an RFA region that is
17 the subject of a declaration in force under this section.

- 18 (4) The Minister may declare in writing that subsection (1) does not
19 apply to an RFA region.

- 20 (5) A declaration is a disallowable instrument for the purposes of
21 section 46A of the *Acts Interpretation Act 1901*.

- 22 (6) The Minister must not make a declaration that has the effect of
23 giving preference (within the meaning of section 99 of the
24 Constitution) to one State or part of a State over another State or
25 part of a State, in relation to the taking of the action:

- 26 (a) by a person for the purposes of trade or commerce between
27 Australia and another country or between 2 States; or
28 (b) by a constitutional corporation.

Section 41

1 **41 What is an *RFA region*?**

2 *Regions that are RFA regions*

- 3 (1) Each of the following is an ***RFA region***:
- 4 (a) the area of forest called the Eden Management Area in the
5 report entitled “Towards an Eden Regional Forest
6 Agreement”, published by the Commonwealth and New
7 South Wales and dated May 1998;
- 8 (b) the area delineated as the Lower North East Region in
9 Attachment 3 to the Scoping Agreement for New South
10 Wales Regional Forest Agreements, made by the
11 Commonwealth and New South Wales and dated January
12 1996;
- 13 (c) the area delineated as the Upper North East Region in
14 Attachment 3 to the Scoping Agreement for New South
15 Wales Regional Forest Agreements, made by the
16 Commonwealth and New South Wales and dated January
17 1996;
- 18 (d) the area delineated as the Southern Region in Attachment 3
19 to the Scoping Agreement for New South Wales Regional
20 Forest Agreements, made by the Commonwealth and New
21 South Wales and dated January 1996;
- 22 (e) the area delineated as the Gippsland Region in the map of
23 that region dated 11 March 1998 and published by the Forest
24 Information Section of the Victorian Department of Natural
25 Resources and Environment;
- 26 (f) the area delineated as the North East RFA Region in the map
27 of that region dated 11 March 1998 and published by the
28 Forest Information Section of the Victorian Department of
29 Natural Resources and Environment;
- 30 (g) the area of Victoria within the boundary formed by:
- 31 (i) the road between Frances and Natimuk; and
32 (ii) the Wimmera Highway between Natimuk and
33 Rupanyup; and
34 (iii) the road between Stawell and Warracknabeal; and
-

- 1 (iv) the Western Highway to Ararat;
2 (v) the Pyrenees Highway; and
3 (vi) the southern boundaries of the areas known as the
4 Bendigo and Midlands Forest Management Areas; and
5 (vii) the Hume Freeway between Avenel and the northern
6 edge of the Melbourne metropolitan area;
7 excluding the metropolitan areas of Melbourne and Geelong
8 and built-up areas of major rural cities or towns;
9 (h) the area delineated as the South-East Region in Attachment 3
10 to the Scoping Agreement for Queensland Regional Forest
11 Agreements, made by the Commonwealth and Queensland
12 and dated January 1997;
13 (i) the area shown as the South-West Region in Map 1 of the
14 report “Towards a Regional Forest Agreement for the
15 South-West Forest Region of Western Australia”, published
16 by the Joint Commonwealth and Western Australia RFA
17 Steering Committee.

18 *Regulations may amend list of regions*

- 19 (2) The regulations may amend subsection (3).

20 *Prerequisites for prescribing RFA regions*

- 21 (3) Before the Governor-General makes regulations amending
22 subsection (1), the Minister must be satisfied that the proposed
23 regulations, in conjunction with this Subdivision, will not give
24 preference (within the meaning of section 99 of the Constitution) to
25 one State or part of a State over another State or part of a State.

26 **Subdivision C—Limits on application**

27 **42 This Division does not apply to some forestry operations**

28 Subdivisions A and B do not apply to forestry operations:

- 29 (a) in a property included in the World Heritage List; or

Chapter 2 Protecting the environment

Part 4 Cases in which environmental approvals are not needed

Division 4 Forestry operations in certain regions

Section 42

- 1 (b) in a wetland included in the List of Wetlands of International
2 Importance kept under the Ramsar Convention; or
3 (c) that are incidental to another action whose primary purpose
4 does not relate to forestry.

1

2 **Division 5—Actions in the Great Barrier Reef Marine Park**

3 **43 Actions taken in accordance with permission**

4 A person may take an action described in a provision of Part 3
5 without an approval under Part 9 for the purposes of the provision
6 if:

7 (a) the action is taken in the Great Barrier Reef Marine Park
8 established by the *Great Barrier Reef Marine Park Act 1975*;
9 and

10 (b) the person is authorised to take the action in the place where
11 he or she takes it, by any of the following instruments made
12 or issued under that Act (including instruments made or
13 issued under an instrument (including regulations) made or
14 issued under that Act):

- 15 (i) a zoning plan;
16 (ii) a plan of management;
17 (iii) a permission;
18 (iv) an authority;
19 (v) an approval;
20 (vi) a permit.

1

2

Chapter 3—Bilateral agreements

3

Part 5—Bilateral agreements

4

Division 1—Object of Part

5

44 Object of this Part

6

The object of this Part is to provide for agreements between the Commonwealth and a State or self-governing Territory that:

7

8

(a) protect the environment; and

9

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

10

11

(c) ensure an efficient, timely and effective process for environmental assessment and approval of actions; and

12

13

(d) minimise duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (and vice versa).

14

15

1

2 **Division 2—Making bilateral agreements**

3 **Subdivision A—Power to make bilateral agreements**

4 **45 Minister may make agreement**

5 *Making bilateral agreement*

- 6 (1) On behalf of the Commonwealth, the Minister may enter into a
7 bilateral agreement.

8 Note 1: A bilateral agreement can detail the level of Commonwealth
9 accreditation of State practices, procedures, processes, systems,
10 management plans and other approaches to environmental protection.

11 Note 2: Subdivision B sets out some prerequisites for entering into bilateral
12 agreements.

13 *What is a **bilateral agreement**?*

- 14 (2) A **bilateral agreement** is a written agreement between the
15 Commonwealth with a State or a self-governing Territory that:
16 (a) provides for one or more of the following:
17 (i) protecting the environment;
18 (ii) promoting the conservation and ecologically sustainable
19 use of natural resources;
20 (iii) ensuring an efficient, timely and effective process for
21 environmental assessment and approval of actions;
22 (iv) minimising duplication in the environmental assessment
23 and approval process through Commonwealth
24 accreditation of the processes of the State or Territory
25 (or vice versa); and
26 (b) is expressed to be a bilateral agreement.

27 *Publishing bilateral agreements*

- 28 (3) As soon as practicable after entering into a bilateral agreement, the
29 Minister must publish it in accordance with the regulations.

Section 46

1 **46 Agreement may declare actions do not need approval under Part**
2 **9**

3 *Declaration of actions not needing approval*

4 (1) A bilateral agreement may declare that actions in a class of actions
5 specified in the agreement wholly or partly by reference to the fact
6 that:

- 7 (a) their taking has been approved by the State or self-governing
8 Territory that is party to the agreement, or a specified agency
9 of the State or Territory, in a specified manner; or
10 (b) their taking has been approved by the Commonwealth or a
11 Commonwealth agency in a specified manner; or
12 (c) they are taken in a specified manner;

13 do not require approval under Part 9 for the purposes of a specified
14 provision of Part 3.

15 Note: A declaration identifying actions in the way described in paragraph
16 (1)(a) or (c) can accredit practices, procedures, systems or
17 management plans of the State or self-governing Territory.

18 *Specified class of actions*

19 (2) The Minister may enter into a bilateral agreement declaring that
20 actions approved in a specified manner do not require approval
21 under Part 9 for the purposes of a provision of Part 3 only if he or
22 she is satisfied that each person approving an action in that manner
23 will, in deciding whether to approve the action, adequately
24 consider the impacts that the action:

- 25 (a) has or will have; or
26 (b) is likely to have;

27 on the matter protected by the provision.

28 *Specified manner of approval*

29 (3) A bilateral agreement between the Commonwealth and a State or
30 Territory may specify a manner of approving the taking of an
31 action, or a manner of taking an action, by reference to:

- 1 (a) an instrument that exists when the agreement is made,
2 including:
3 (i) a law of the State or Territory; or
4 (ii) an instrument (including a management plan or
5 agreement) that is made under a law of the State or
6 Territory; or
7 (b) an instrument made by agreement between the
8 Commonwealth and the State under the bilateral agreement;
9 or
10 (c) a policy, plan or program that the Minister has endorsed
11 under an agreement made under Part 10 (about strategic
12 assessment).

13 This does not limit the ways in which a bilateral agreement may
14 specify a manner of approving the taking of an action or of taking
15 an action.

16 *Strategic assessments*

- 17 (4) The Minister may enter into a bilateral agreement that declares
18 actions approved in accordance with a policy, plan or program
19 endorsed under an agreement made under Part 10 do not require
20 approval under Part 9 for the purposes of a provision of Part 3 only
21 if he or she is satisfied that the report under the agreement
22 adequately addresses the impacts the actions:
23 (a) have or will have; or
24 (b) are likely to have;
25 on the matter protected by the provision.

26 *Actions taken in a specified manner*

- 27 (5) The Minister may enter into a bilateral agreement declaring that
28 actions taken in a specified manner do not require approval under
29 Part 9 for the purposes of a specified provision of Part 3 only if he
30 or she is satisfied that taking an action in that manner will reduce
31 to acceptable levels the impacts the action:
32 (a) has or will have; or

Section 47

- 1 (b) is likely to have;
2 on the matter protected by the provision.

3 **47 Agreement may declare classes of actions do not need assessment**

4 *Declaration of actions that do not need further assessment*

- 5 (1) A bilateral agreement may declare that actions in a class of actions
6 identified wholly or partly by reference to the fact that they have
7 been assessed in a specified manner need not be assessed under
8 Part 8.

9 Note: A declaration described in subsection (1) can accredit practices,
10 procedures, systems of the State or self-governing Territory for
11 environmental assessment.

12 *Prerequisite to declaration*

- 13 (2) The Minister may enter into a bilateral agreement declaring that
14 actions assessed in a specified manner need not be assessed under
15 Part 8 only if he or she is satisfied that assessment of an action in
16 the specified manner will include assessment of the impacts the
17 action:
18 (a) has or will have; or
19 (b) is likely to have;
20 on each matter protected by a provision of Part 3.

21 *Assessment approaches that may be accredited*

- 22 (3) The manner of assessment of actions that may be specified in a
23 bilateral agreement between the Commonwealth and a State or
24 Territory for the purposes of subsection (1) includes:
25 (a) assessment by any person under a law of the State or
26 Territory; and
27 (b) assessment by any person under an agreement or other
28 instrument made under a law of the State or Territory; and

- 1 (c) assessment by any person in accordance with criteria
2 specified in an instrument agreed by the parties to the
3 bilateral agreement.

4 This does not limit subsection (1).

5 *Report on actions that do not need further assessment*

- 6 (4) If a bilateral agreement has (or could have) the effect that an action
7 need not be assessed under Part 8 but the action must still be
8 approved under Part 9, the agreement must provide for the Minister
9 to receive a report including, or accompanied by, enough
10 information about the relevant impacts of the action to let the
11 Minister make an informed decision whether or not to approve
12 under Part 9 (for the purposes of each controlling provision) the
13 taking of the action.

14 **48 Other provisions of bilateral agreements**

- 15 (1) A bilateral agreement may include:
16 (a) provisions for State accreditation of Commonwealth
17 processes and decisions; and
18 (b) other provisions for achieving the object of this Part; and
19 (c) provisions for the provision of information by one party to
20 the agreement to the other party; and
21 (d) provisions for the publication of information relating to the
22 agreement; and
23 (e) provisions relating to the operation of the whole agreement
24 or particular provisions of the agreement, such as:
25 (i) provisions for the commencement of all or part of the
26 agreement; or
27 (ii) provisions for auditing, monitoring and reporting on the
28 operation and effectiveness of all or part of the
29 agreement; or
30 (iii) provisions for review of all or part of the agreement; or
31 (iv) provisions for rescission of all or part of the agreement;
32 or
-

Section 49

- 1 (v) provisions for expiry of the agreement; and
2 (f) provisions varying or revoking another bilateral agreement
3 between the same parties; and
4 (g) a provision dealing with a matter that another section of this
5 Act permits a bilateral agreement to deal with.

6 *Consistency with Act and regulations*

- 7 (2) A provision of a bilateral agreement has no effect for the purposes
8 of this Act to the extent that it is inconsistent with this Act or the
9 regulations. A provision of a bilateral agreement is not inconsistent
10 with this Act or the regulations if it is possible to comply with both
11 the provision on the one hand and the Act or regulations on the
12 other hand.

13 *Relationship with sections 46 and 47*

- 14 (3) Subsection (1) does not limit sections 46 and 47.

15 **49 Express provision needed to affect Commonwealth areas or**
16 **actions**

17 A provision of a bilateral agreement does not have any effect in
18 relation to an action in a Commonwealth area or an action by the
19 Commonwealth or a Commonwealth agency, unless the agreement
20 expressly provides otherwise.

21 **Subdivision B—Prerequisites for making bilateral agreements**

22 **50 Minister may only enter into agreement if prescribed criteria are**
23 **met**

24 The Minister may enter into a bilateral agreement only if the
25 Minister is satisfied that the agreement:

- 26 (a) accords with the objects of this Act; and
27 (b) meets the requirements (if any) prescribed by the regulations.

1 **51 Agreements relating to declared World Heritage properties**

2 The Minister may enter into a bilateral agreement containing a
3 provision relating to a declared World Heritage property only if:

- 4 (a) the Minister is satisfied that the provision is not inconsistent
5 with Australia's obligations under the World Heritage
6 Convention; and
7 (b) the Minister is satisfied that the agreement will promote the
8 management of the property in accordance with the
9 Australian World Heritage management principles (if any);
10 and
11 (c) the provision meets the requirements (if any) prescribed by
12 the regulations.

13 **52 Agreements relating to declared Ramsar wetlands**

14 The Minister may enter into a bilateral agreement containing a
15 provision relating to a declared Ramsar wetland only if:

- 16 (a) the Minister is satisfied that the provision is not inconsistent
17 with Australia's obligations under the Ramsar Convention;
18 and
19 (b) the Minister is satisfied that the agreement will promote the
20 management of the wetland in accordance with the
21 Australian Ramsar management principles (if any); and
22 (c) the provision meets the requirements (if any) prescribed by
23 the regulations.

24 **53 Agreements relating to listed threatened species and ecological
25 communities**

26 The Minister may enter into a bilateral agreement containing a
27 provision relating to a listed threatened species or a listed
28 threatened ecological community only if:

- 29 (a) the Minister is satisfied that the provision is not inconsistent
30 with Australia's obligations under:
31 (i) the Biodiversity Convention; or

Section 54

- 1 (ii) the Apia Convention; or
2 (iii) CITES; and
3 (b) the Minister is satisfied that the agreement will promote the
4 survival and/or enhance the conservation status of each
5 species or community to which the provision relates; and
6 (c) the Minister is satisfied that the provision is not inconsistent
7 with any recovery plan for the species or community or a
8 threat abatement plan; and
9 (d) the provision meets the requirements (if any) prescribed by
10 the regulations.

11 **54 Agreements relating to migratory species**

12 The Minister may enter into a bilateral agreement containing a
13 provision relating to a listed migratory species only if:

- 14 (a) the Minister is satisfied that the provision is not inconsistent
15 with the Commonwealth's obligations under whichever of
16 the following conventions or agreements because of which
17 the species is listed:
18 (i) the Bonn Convention;
19 (ii) CAMBA;
20 (iii) JAMBA;
21 (iv) an international agreement approved under subsection
22 209(4); and
23 (b) the Minister is satisfied that the agreement will promote the
24 survival and/or enhance the conservation status of each
25 species to which the provision relates; and
26 (c) the provision meets the requirements (if any) prescribed by
27 the regulations.

28 **55 Agreements relating to nuclear actions**

29 The Minister must not enter into a bilateral agreement containing a
30 provision that:

- 31 (a) relates to a nuclear action; and

- 1 (b) has the effect of giving preference (within the meaning of
2 section 99 of the Constitution) to one State or part of a State
3 over another State or part of a State, in relation to the taking
4 of a nuclear action:
5 (i) by a person for the purposes of trade or commerce
6 between Australia and another country or between 2
7 States; or
8 (ii) by a constitutional corporation.

9 **56 Agreements relating to prescribed actions**

- 10 (1) The Minister must not enter into a bilateral agreement containing a
11 provision that:
12 (a) relates to an action prescribed for the purposes of subsection
13 25(1); and
14 (b) has the effect of giving preference (within the meaning of
15 section 99 of the Constitution) to one State or part of a State
16 over another State or part of a State, in relation to the taking
17 of the action:
18 (i) by a person for the purposes of trade or commerce
19 between Australia and another country or between 2
20 States; or
21 (ii) by a constitutional corporation.
- 22 (2) The Minister may enter into a bilateral agreement containing a
23 provision relating to an action prescribed for the purposes of
24 subsection 25(1) only if the Minister is satisfied that the provision
25 is not inconsistent with Australia's obligations under an agreement
26 with one or more other countries.

Section 57

1

2 **Division 3—Suspending and ending the effect of bilateral**
3 **agreements**

4 **Subdivision A—Suspension and cancellation of effect**

5 **57 Representations about suspension or cancellation**

6 *Representations*

7 (1) A person may refer to the Minister a matter that the person believes
8 involves a contravention of a bilateral agreement.

9 *Minister must decide whether agreement has been contravened*

10 (2) The Minister must:

- 11 (a) decide whether or not the bilateral agreement has been
12 contravened; and
13 (b) decide what action he or she should take in relation to any
14 contravention.

15 *Publication of decision and reasons*

16 (3) The Minister must publish in accordance with the regulations each
17 decision he or she makes, and the reasons for it.

18 *Minister need not decide on vexatious referrals*

19 (4) Despite subsection (2), the Minister need not make a decision
20 under that subsection if he or she is satisfied that:

- 21 (a) the referral was vexatious, frivolous, or not supported by
22 sufficient information to make a decision; or
23 (b) the matter referred is the same in substance as a matter that
24 has been referred before; or
25 (c) if the alleged contravention of the bilateral agreement were a
26 contravention of the Act, the person referring the matter

1 would not be entitled to apply under section 475 for an
2 injunction in relation to the contravention.

3 **58 Consultation before cancellation or suspension**

- 4 (1) The Minister (the *Environment Minister*) must consult the
5 appropriate Minister of a State or Territory that is party to a
6 bilateral agreement if the Environment Minister believes that the
7 State or Territory:
8 (a) has not complied with the agreement or will not comply with
9 it; or
10 (b) has not given effect, or will not give effect, to the agreement
11 in a way that:
12 (i) accords with the objects of this Act and the objects of
13 this Part; and
14 (ii) promotes the discharge of Australia's obligations under
15 any agreement with one or more other countries relevant
16 to a matter covered by the agreement.
- 17 (2) Subsection (1) operates whether the Environment Minister's belief
18 relates to a matter referred to him or her under section 57 or not.

19 **59 Suspension or cancellation**

20 *Minister may give notice of suspension or cancellation*

- 21 (1) If, after the consultation, the Environment Minister is not satisfied
22 that the State or Territory:
23 (a) has complied with, and will comply with, the agreement; and
24 (b) has given effect, and will give effect, to the agreement in a
25 way that:
26 (i) accords with the objects of this Act and the objects of
27 this Part; and
28 (ii) promotes the discharge of Australia's obligations under
29 all international agreements (if any) relevant to a matter
30 covered by the agreement;

Chapter 3 Bilateral agreements

Part 5 Bilateral agreements

Division 3 Suspending and ending the effect of bilateral agreements

Section 59

1 he or she may give the appropriate Minister of the State or
2 Territory a written notice described in subsection (2) or (3).

3 Example 1: The Minister could give notice if the agreement declared that certain
4 actions affecting the world heritage values of a declared world
5 heritage property did not require approval under Part 9 if approved by
6 the State, and the State approved an action that was not consistent
7 with the protection, conservation and presentation of those values.

8 Example 2: The Minister could give notice if the agreement declared that certain
9 actions affecting the ecological character of a declared Ramsar
10 wetland did not require approval under Part 9 if approved by the State,
11 and the State approved an action that had a significant adverse impact
12 on that character.

13 Example 3: The Minister could give notice if the agreement declared that certain
14 actions affecting a listed threatened species did not require approval
15 under Part 9 if approved by the State, and the State approved an action
16 that caused the species to become more threatened.

17 *Notice of suspension*

18 (2) A notice may state that the effect of the agreement, or specified
19 provisions of the agreement, for the purposes of this Act or
20 specified provisions of this Act is suspended, either generally or in
21 relation to actions in a specified class, for a period:

- 22 (a) starting on a specified day at least 10 business days (in the
23 capital city of the State or Territory) after the day on which
24 the notice is given; and
25 (b) ending on a specified later day or on the occurrence of a
26 specified event.

27 *Notice of cancellation*

28 (3) A notice may state that the effect of the agreement, or specified
29 provisions of the agreement, for the purposes of this Act or
30 specified provisions of this Act is cancelled, either generally or in
31 relation to actions in a specified class, on a specified day at least 10
32 business days (in the capital city of the State or Territory) after the
33 day on which the notice is given.

1 *Effect suspended or cancelled in accordance with notice*

- 2 (4) The effect of an agreement or specified provision of an agreement
3 is suspended or cancelled for the purposes of this Act, or of a
4 specified provision of this Act, either generally or in relation to
5 actions in a specified class, in accordance with the notice. This
6 subsection has effect subject to sections 61 and 62.

7 *Reasons for giving notice*

- 8 (5) When giving a notice, the Environment Minister must give the
9 appropriate Minister of the State or Territory a written statement of
10 reasons for the giving of the notice.

11 *Publishing notice and reasons*

- 12 (6) As soon as practicable after the suspension or cancellation occurs,
13 the Environment Minister must publish in accordance with the
14 regulations:
15 (a) notice of the suspension or cancellation; and
16 (b) reasons for the suspension or cancellation.

17 **60 Emergency suspension of effect of bilateral agreement**

- 18 (1) This section applies if the Minister is satisfied that:
19 (a) the State or Territory that is party to a bilateral agreement is
20 not complying with it, or will not comply with it; and
21 (b) as a result of the non-compliance, a significant impact is
22 occurring or imminent on any matter protected by a provision
23 of Part 3 that is relevant to an action in a class of actions to
24 which the agreement relates.
- 25 (2) The Minister may suspend the effect of the agreement or specified
26 provisions of the agreement for the purposes of this Act or
27 specified provisions of this Act, by notice:
28 (a) given to the appropriate Minister of the State or Territory;
29 and
30 (b) published in accordance with the regulations.
-

Chapter 3 Bilateral agreements

Part 5 Bilateral agreements

Division 3 Suspending and ending the effect of bilateral agreements

Section 61

- 1 (3) The suspension continues:
2 (a) for the period specified in the notice; or
3 (b) until the occurrence of an event specified in the notice.
4 (4) Subsection (3) has effect subject to section 62.

61 Cancellation during suspension

- 6 (1) The Minister may give notice of the cancellation of the effect of a
7 bilateral agreement even while its effect is suspended under section
8 59 or 60.
9 (2) The cancellation may occur even though the period of suspension
10 has not ended.
11 (3) This section applies whether the cancellation or suspension has
12 effect generally or in relation to actions in a specified class.

62 Revocation of notice of suspension or cancellation

- 14 (1) This section applies if the Minister:
15 (a) has given a notice under section 59 or 60 to suspend or
16 cancel the effect of a bilateral agreement (either generally or
17 in relation to actions in a specified class); and
18 (b) is later satisfied that the State or Territory that is party to the
19 agreement will comply with the agreement and give effect to
20 it in a way that:
21 (i) accords with the objects of this Act and the objects of
22 this Part; and
23 (ii) promotes the discharge of Australia's obligations under
24 all international agreements (if any) relevant to a matter
25 covered by the agreement.
26 (2) The Minister may revoke the notice of suspension or cancellation
27 by another written notice:
28 (a) given to the appropriate Minister of the State or Territory;
29 and

- 1 (b) published in accordance with the regulations.
2 However, the Environment Minister may not revoke the notice of
3 cancellation after cancellation of the effect of the agreement
4 occurs.
- 5 (3) Suspension or cancellation of the effect of the agreement does not
6 occur if the notice of suspension or cancellation is revoked before
7 the suspension or cancellation would otherwise occur.
- 8 (4) Suspension of the effect of the agreement ends when the notice of
9 suspension is revoked.

10 **63 Cancellation or suspension at request of other party**

11 *Minister may give notice of cancellation or suspension*

- 12 (1) The Minister may give the appropriate Minister of a State or
13 self-governing Territory that is party to a bilateral agreement a
14 notice under subsection (2) or (3) if the appropriate Minister has
15 requested a notice under that subsection in accordance with the
16 agreement.

17 *Notice of suspension*

- 18 (2) A notice may state that the effect of the agreement, or specified
19 provisions of the agreement, for the purposes of this Act or
20 specified provisions of this Act is suspended, either generally or in
21 relation to actions in a specified class, for a period:
- 22 (a) starting on a specified day after the day on which the notice
23 is given; and
24 (b) ending on a specified later day or on the occurrence of a
25 specified event.

26 *Notice of cancellation*

- 27 (3) A notice may state that the effect of the agreement, or specified
28 provisions of the agreement, for the purposes of this Act or
29 specified provisions of this Act is cancelled, either generally or in

Section 64

1 relation to actions in a specified class, on a specified day after the
2 day on which the notice is given.

3 *Effect suspended or cancelled in accordance with notice*

4 (4) The effect of an agreement or specified provision of an agreement
5 is suspended or cancelled for the purposes of this Act, or of a
6 specified provision of this Act, either generally or in relation to
7 actions in a specified class, in accordance with the notice.

8 *Publishing notice and reasons*

9 (5) As soon as practicable after the suspension or cancellation occurs,
10 the Minister must publish in accordance with the regulations:
11 (a) notice of the suspension or cancellation; and
12 (b) reasons for the suspension or cancellation.

13 **64 Cancellation or suspension of bilateral agreement does not affect**
14 **certain actions**

15 *Application*

16 (1) This section explains how this Act operates in relation to an action
17 that a person was able to take without approval under Part 9 for the
18 purposes of a provision of Part 3 because of Division 1 of Part 4
19 and a provision of a bilateral agreement immediately before the
20 cancellation or suspension of the operation of the provision of the
21 agreement for the purposes of this Act or of any provision of this
22 Act.

23 *Actions approved in specified manner may be taken*

24 (2) If the action was able to be taken without approval under Part 9
25 because its taking had already been approved in a manner specified
26 in the agreement, this Act continues to operate in relation to the
27 action as if the suspension or cancellation had not occurred.

1 *Actions taken in specified manner may be continued*

2 (3) If:

3 (a) the person was already taking the action when the operation
4 of the provision of the agreement was suspended or
5 cancelled; and

6 (b) the action was able to be taken without approval under Part 9
7 because the person was taking the action in the manner
8 specified in the bilateral agreement;

9 this Act continues to operate in relation to the action as if the
10 suspension or cancellation had not occurred.

11 **Subdivision B—Expiry of bilateral agreements**

12 **65 Expiry and review of bilateral agreements**

13 (1) A bilateral agreement ceases to have effect for the purposes of this
14 Act:

15 (a) 5 years after it is entered into; or

16 (b) at an earlier time when the agreement provides for it to cease
17 to have effect for the purposes of this Act.

18 Note: The parties to a bilateral agreement may also agree to revoke it.

19 (2) The Minister must:

20 (a) cause a review of the operation of a bilateral agreement to be
21 carried out; and

22 (b) give a report of the review to the appropriate Minister of the
23 State or Territory that is party to the agreement;

24 before the agreement ceases to have effect as a result of this
25 section.

26 Note: A bilateral agreement may also provide for review of its operation.

27 (3) The Minister must publish the report in accordance with the
28 regulations.

Section 66

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Chapter 4—Environmental assessments and approvals

Part 6—Simplified outline of this Chapter

66 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

This Chapter deals with assessment and approval of actions that Part 3 prohibits without approval (*controlled actions*). (It does not deal with actions that a bilateral agreement declares not to need approval.)

A person proposing to take an action, or a government body aware of the proposal, may refer the proposal to the Minister so he or she can decide:

- (a) whether his or her approval is needed to take the action; and
- (b) how to assess the impacts of the action to be able to make an informed decision whether or not to approve the action.

An assessment may be done using:

- (a) a process laid down under a bilateral agreement; or
- (b) a process specified in a declaration by the Minister;
or
- (c) a process specially accredited by the Minister; or

1
2
3
4
5
6
7
8

- (d) preliminary documentation provided by the proponent; or
- (e) a public environment report; or
- (f) an environmental impact statement; or
- (g) a public inquiry.

Once the report of the assessment is given to the Minister, he or she must decide whether or not to approve the action, and what conditions to attach to any approval.

Section 67

1

2 **Part 7—Deciding whether approval of actions is**
3 **needed**

4 **Division 1—Referral of proposals to take action**

5 **67 What is a *controlled action*?**

6 An action that a person proposes to take is a *controlled action* if
7 the taking of the action by the person without approval under Part 9
8 for the purposes of a provision of Part 3 would be prohibited by the
9 provision. The provision is a *controlling provision* for the action.

10 **68 Referral by person proposing to take action**

11 (1) A person proposing to take an action that the person thinks may be
12 or is a controlled action must refer the proposal to the Minister for
13 the Minister's decision whether or not the action is a controlled
14 action.

15 (2) A person proposing to take an action that the person thinks is not a
16 controlled action may refer the proposal to the Minister for the
17 Minister's decision whether or not the action is a controlled action.

18 (3) In a referral under this section, the person must state whether or not
19 the person thinks the action the person proposes to take is a
20 controlled action.

21 (4) If the person states that the person thinks the action is a controlled
22 action, the person must identify in the statement each provision
23 that the person thinks is a controlling provision.

24 **69 State or Territory may refer proposal to Minister**

25 (1) A State, self-governing Territory or agency of a State or
26 self-governing Territory that is aware of a proposal by a person to
27 take an action may refer the proposal to the Minister for a decision

1 whether or not the action is a controlled action, if the State,
2 Territory or agency has administrative responsibilities relating to
3 the action.

4 (2) This section does not apply in relation to a proposal by a State,
5 self-governing Territory or agency of a State or self-governing
6 Territory to take an action.

7 Note: Section 68 applies instead.

8 **70 Minister may request referral of proposal**

9 (1) If the Minister believes a person proposes to take an action that the
10 Minister thinks may be or is a controlled action, the Minister may
11 request:

12 (a) the person; or

13 (b) a State, self-governing Territory or agency of a State or
14 self-governing Territory that the Minister believes has
15 administrative responsibilities relating to the action;

16 to refer the proposal to the Minister within 15 business days.

17 Note 1: If the person does not refer the proposal to take the action, he or she
18 cannot get an approval under Part 9 to take the action. If taking the
19 action without approval contravenes Part 3, an injunction could be
20 sought to prevent or stop the action, or the person could be ordered to
21 pay a pecuniary penalty.

22 Note 2: Section 156 sets out rules about time limits.

23 (2) In making a request, the Minister must act in accordance with the
24 regulations (if any).

25 **71 Commonwealth agency may refer proposal to Minister**

26 (1) A Commonwealth agency (except the Minister) may refer to the
27 Minister a proposal by a person to take an action (for the Minister's
28 decision whether or not the action is a controlled action) if the
29 agency:

30 (a) thinks the action may be or is a controlled action; and

31 (b) has administrative responsibilities relating to the action.

Section 72

- 1 (2) This section does not apply in relation to a proposal by the
2 Commonwealth or a Commonwealth agency to take an action.

3 Note: Section 68 applies instead.

4 **72 Form and content of referrals**

- 5 (1) A referral of a proposal to take an action must be made in a way
6 prescribed by the regulations.

- 7 (2) A referral of a proposal to take an action must include the
8 information prescribed by the regulations.

9 **73 Notifying person proposing to take action of referral**

10 If a proposal by a person to take an action is referred to the
11 Minister under section 69 or 71, the Minister must inform the
12 person of the referral.

13 **74 Inviting provision of information on referred proposal**

14 *Inviting other Commonwealth Ministers to provide information*

- 15 (1) As soon as practicable after receiving a referral of a proposal to
16 take an action, the Minister (the *Environment Minister*) must:
17 (a) inform any other Minister whom the Environment Minister
18 believes has administrative responsibilities relating to the
19 proposal; and
20 (b) invite each other Minister informed to give the Environment
21 Minister within 10 business days information that relates to
22 the proposed action and is relevant to deciding whether or not
23 the proposed action is a controlled action.

24 *Inviting comments from appropriate State or Territory Minister*

- 25 (2) As soon as practicable after receiving, from the person proposing
26 to take an action or from a Commonwealth agency, a referral of a
27 proposal to take an action in a State or self-governing Territory, the
28 Environment Minister must:

- 1 (a) inform the appropriate Minister of the State or Territory; and
2 (b) invite that Minister to give the Environment Minister
3 comments within 10 business days on whether the proposed
4 action is a controlled action;

5 if the Environment Minister thinks the action may have an impact
6 on a matter protected by a provision of Division 1 of Part 3 (about
7 matters of national environmental significance).

8 Note: Subsection (2) also applies in relation to actions to be taken in an area
9 offshore from a State or the Northern Territory. See section 157.

10 *Inviting person proposing to take action to give information*

- 11 (3) As soon as practicable after receiving a referral under section 69 or
12 71 of a proposal by a person to take an action, the Environment
13 Minister must invite the person to give the Environment Minister
14 relevant information about whether the proposed action is a
15 controlled action, within 10 business days.

16 *Section does not apply if proponent says action is controlled action*

- 17 (4) This section does not apply in relation to a referral of a proposal to
18 take an action by the person proposing to take the action if the
19 person states in the referral that the person thinks the action is a
20 controlled action.

Section 75

1

2 **Division 2—Ministerial decision whether action needs**
3 **approval**

4 **75 Does the proposed action need approval?**

5 *Is the action a controlled action?*

- 6 (1) The Minister must decide:
7 (a) whether the action that is the subject of a proposal referred to
8 the Minister is a controlled action; and
9 (b) which provisions of Part 3 (if any) are controlling provisions
10 for the action.

11 *Considerations in decision*

- 12 (2) If, when the Minister makes a decision under subsection (1), it is
13 relevant for the Minister to consider the impacts of an action:
14 (a) the Minister must consider all adverse impacts (if any) the
15 action:
16 (i) has or will have; or
17 (ii) is likely to have;
18 on the matter protected by each provision of Part 3; and
19 (b) must not consider any beneficial impacts the action:
20 (i) has or will have; or
21 (ii) is likely to have;
22 on the matter protected by each provision of Part 3.

23 *Designating a proponent of the action*

- 24 (3) If the Minister decides that the action is a controlled action, the
25 Minister must designate a person as proponent of the action.

26 *Consent to designation*

- 27 (4) The Minister may designate a person who does not propose to take
28 the action only if:
-

- 1 (a) the person agrees to being designated; and
2 (b) the person proposing to take the action agrees to the
3 designation.

4 *Timing of decision and designation*

- 5 (5) The Minister must make the decisions and designation:
6 (a) within 20 business days of the referral; or
7 (b) if the person proposing to take the action referred the
8 proposal and stated in the referral that the person thought the
9 action was a controlled action—within 10 business days of
10 the referral.

11 Note: Section 156 sets out rules about time limits.

12 *Time does not run while further information being sought*

- 13 (6) If the Minister has requested more information under section 76 for
14 the purposes of making a decision, a day is not to be counted as a
15 business day for the purposes of subsection (5) if it is:
16 (a) on or after the day the Minister requested the information;
17 and
18 (b) on or before the day on which the Minister receives the last
19 of the information requested.

20 *Running of time may be suspended by agreement*

- 21 (7) The Minister and the person proposing to take the action may agree
22 in writing that days within a period worked out in accordance with
23 the agreement are not to be counted as business days for the
24 purposes of subsection (5). If the agreement is made, those days
25 are not to be counted for the purposes of that subsection.

26 **76 Minister may request more information for making decision**

27 If the Minister believes on reasonable grounds that the referral of a
28 proposal to take an action does not include enough information for
29 the Minister to decide:

Section 77

- 1 (a) whether the action is a controlled action; or
2 (b) which provisions of Part 3 (if any) are controlling provisions
3 for the action;
4 the Minister may request the person proposing to take the action to
5 provide specified information relevant to making the decision.

6 **77 Notice and reasons for decision**

7 *Giving notice*

- 8 (1) Within 10 business days after deciding whether an action that is the
9 subject of a proposal referred to the Minister is a controlled action
10 or not, the Minister must:
11 (a) give written notice of the decision to:
12 (i) the person proposing to take the action; and
13 (ii) if the Minister has designated as proponent of the action
14 a person who does not propose to take the action—that
15 person; and
16 (iii) if the Minister decided that the action is a controlled
17 action because of Division 1 of Part 3 (which deals with
18 matters of national environmental significance)—the
19 appropriate Minister of each State or self-governing
20 Territory in which the action is to be taken; and
21 (b) publish notice of the decision in accordance with the
22 regulations.

23 Note 1: Section 156 sets out rules about time limits.

24 Note 2: Subparagraph (1)(a)(iii) also applies to actions to be taken in an area
25 offshore from a State or the Northern Territory. See section 157.

26 *Notice must identify any applicable controlling provisions*

- 27 (2) If the decision is that the action is a controlled action, the notice
28 must identify each of the controlling provisions.

1 *Notice must identify specified manner of taking action*

- 2 (3) If the decision is that the action is not a controlled action because
3 the Minister believes the action will be taken in a particular manner
4 (whether specified in a bilateral agreement or a declaration under
5 section 33 or not), the notice must identify the manner.

6 Note: The Minister may decide an action is not a controlled action because
7 he or she believes the action will be taken in a manner that will ensure
8 the action will not have (and is not likely to have) an adverse impact
9 on any of the matters protected by a provision of Part 3, even if the
10 manner is not specified in a bilateral agreement or declaration.

11 *Reasons for decision*

- 12 (4) The Minister must give reasons for the decision to a person who:
13 (a) has been given the notice; and
14 (b) within 28 days of being given the notice, has requested the
15 Minister to provide reasons.

16 The Minister must do so as soon as practicable, and in any case
17 within 28 days of receiving the request.

18 *Reasons need not be given in some cases*

- 19 (5) Subsection (4) does not apply in relation to a decision whether or
20 not an action is a controlled action if the person proposing to take
21 the action:
22 (a) referred the proposal to the Minister; and
23 (b) stated in the referral that the person thought the action was a
24 controlled action.

25 **78 Reconsideration of decision**

26 *Limited power to vary or substitute decisions*

- 27 (1) The Minister may revoke a decision (the *first decision*) made under
28 subsection 75(1) and substitute a new decision under that
29 subsection for the first decision, but only if:

Section 78

- 1 (a) the Minister is satisfied that the revocation and substitution is
2 warranted by:
3 (i) the availability of substantial new information relating
4 to the action about which the decision was made; or
5 (ii) a substantial change in circumstances that was not
6 foreseen at the time of the first decision; or
7 (b) if the first decision was that the action was not a controlled
8 action because the Minister believed the action would be
9 taken in the manner identified in the notice under subsection
10 77(3)—the Minister is satisfied that the action is not being, or
11 will not be, taken in the manner identified; or
12 (c) if the first decision was that the action was not a controlled
13 action because of a provision of a bilateral agreement or
14 declaration under section 33—the provision of the agreement
15 or declaration no longer operates in relation to the action; or
16 (d) the Minister is requested under section 79 to reconsider the
17 decision.

18 *Reversing decision that action is not a controlled action*

- 19 (2) Subject to subsection (1), the Minister may:
20 (a) revoke a decision that an action is not a controlled action and
21 substitute a decision that the action is a controlled action; or
22 (b) revoke a decision (the *earlier decision*) identifying one or
23 more provisions of Part 3 as controlling provisions for an
24 action and substitute a decision identifying as a controlling
25 provision a provision of Part 3 not identified by the earlier
26 decision as a controlling provision;
27 despite paragraphs 12(2)(c), 16(2)(c), 19(3)(b), 20(2)(c), 21(4)(c),
28 23(4)(c), 25(2)(c), 26(3)(d) and 28(2)(d). This does not limit the
29 decisions that the Minister may revoke and substitute under
30 subsection (1).

31 Note: Those paragraphs let an action be taken without approval for the
32 purposes of a particular provision of Part 3 if the Minister has decided
33 that the action is not a controlled action or that the action is a
34 controlled action but the provision is not a controlling provision.

1 *Decision not to be revoked after approval granted or refused or*
2 *action taken*

- 3 (3) The Minister must not revoke the first decision after:
4 (a) the Minister has granted or refused an approval of the taking
5 of the action; or
6 (b) the action is taken.

7 *General effect of change of decision*

- 8 (4) When the first decision is revoked and a new decision is
9 substituted for it:
10 (a) any provisions of this Chapter that applied in relation to the
11 action because of the first decision cease to apply in relation
12 to the action; and
13 (b) any provisions of this Chapter that are relevant because of the
14 new decision apply in relation to the action.

15 *Change of designation of proponent*

- 16 (5) If the Minister believes a person (the ***first proponent***) designated
17 under section 75 as proponent of an action is no longer an
18 appropriate person to be the designated proponent of the action, the
19 Minister may revoke the designation and designate another person
20 (the ***later proponent***) as proponent of the action.

21 *Consent to designation*

- 22 (6) The Minister may designate the other person as proponent of the
23 action only if:
24 (a) he or she consents to it and the person proposing to take the
25 action agrees to it; or
26 (b) the other person is the person proposing to take the action.

27 *Effect of change of designated proponent*

- 28 (7) If the Minister revokes the designation of the first proponent and
29 designates the later proponent:
-

Section 79

- 1 (a) the provisions of this Chapter that applied to the first
2 proponent cease to apply to the first proponent in relation to
3 the action but apply to the later proponent; and
4 (b) for the purposes of those provisions the later proponent is
5 taken to have done anything the first proponent did in
6 relation to the action; and
7 (c) for the purposes of those provisions anything done in relation
8 to the first proponent in relation to the action is taken to have
9 been done in relation to the later proponent.

10 **79 Reconsideration of decision on request by a State or Territory**

11 (1) This section applies if:

- 12 (a) the Minister (the *Environment Minister*) makes a decision
13 about whether a provision of Division 1 of Part 3 is a
14 controlling provision for an action proposed to be taken in a
15 State or self-governing Territory; and
16 (b) the person proposing to take the action did not refer the
17 proposal to the Minister with a statement that the person
18 thought the action was a controlled action.

19 Note 1: Division 1 of Part 3 deals with requirements for approvals for actions
20 involving matters of national environmental significance.

21 Note 2: This section also applies to actions to be taken in an area offshore
22 from a State or the Northern Territory. See section 157.

23 (2) Within 5 business days of being notified of the decision, a Minister
24 of the State or Territory may request the Environment Minister to
25 reconsider the Environment Minister's decisions made under
26 subsection 75(1).

27 Note: Subsection 75(1) provides for decisions about whether the action is a
28 controlled action and what the controlling provisions for the action
29 are.

30 (3) Within 20 business days after receiving a request to reconsider a
31 decision, the Environment Minister must:

- 32 (a) reconsider the decision; and

- 1 (b) either confirm it or revoke it and substitute a new decision
2 for it; and
3 (c) give written notice of the outcome of the reconsideration and
4 reasons for the outcome to:
5 (i) the Minister who requested the reconsideration; and
6 (ii) the person proposing to take the action; and
7 (iii) the designated proponent of the action; and
8 (d) after giving notice as described in paragraph (c), publish
9 notice of the outcome and the reasons for it in accordance
10 with the regulations.
11 Note: Section 156 sets out rules about time limits.

Section 80

1

2

Part 8—Assessing impacts of controlled actions

3

Division 1—Simplified outline of this Part

4

80 Simplified outline of this Part

5

The following is a simplified outline of this Part:

6

This Part provides for the assessment of impacts of controlled actions, to provide information for decisions whether or not to approve the taking of the actions. However, this Part does not apply to actions that a bilateral agreement or Ministerial declaration says are to be assessed in another way.

7

8

9

10

11

For actions that are to be assessed under this Part, the Minister must choose one of the following methods of assessment:

12

13

(a) a specially accredited process;

14

(b) an assessment on preliminary documentation (see Division 4);

15

16

(c) a public environment report (see Division 5);

17

(d) an environmental impact statement (see Division 6);

18

19

(e) a public inquiry (see Division 7).

1

2 **Division 2—Application of this Part**

3 **81 Application**

4 (1) This Part applies to the assessment of the relevant impacts of an
5 action that the Minister has decided under Division 2 of Part 7 is a
6 controlled action.

7 (2) This section has effect subject to sections 83 and 84.

8 (3) This section does not limit section 82.

9 **82 What are the *relevant impacts* of an action?**

10 *If the Minister has decided the action is a controlled action*

11 (1) If the Minister has decided under Division 2 of Part 7 that an action
12 is a controlled action, the *relevant impacts* of the action are the
13 impacts that the action:

14 (a) has or will have; or

15 (b) is likely to have;

16 on the matter protected by each provision of Part 3 that the
17 Minister has decided under that Division is a controlling provision
18 for the action.

19 *If the Minister has not decided whether the action is controlled*

20 (2) If an action is a controlled action or would be apart from Division
21 1 or 2 of Part 4 (which provide that approval under Part 9 is not
22 needed for an action covered by a bilateral agreement or
23 declaration)—the *relevant impacts* of the action are impacts that
24 the action:

25 (a) has or will have; or

26 (b) is likely to have;

Section 83

1 on the matter protected by each provision of Part 3 that is a
2 controlling provision for the action or would be apart from
3 whichever of those Divisions is relevant.

4 *Relationship between subsections (1) and (2)*

5 (3) Subsection (1) has effect despite subsection (2).

6 **83 This Part does not apply if action covered by bilateral agreement**

- 7 (1) This Part does not apply in relation to an action if:
8 (a) the action is to be taken in a State or self-governing
9 Territory; and
10 (b) a bilateral agreement between the Commonwealth and the
11 State or Territory declares that actions in a class that includes
12 the action need not be assessed under this Part; and
13 (c) the provision of the bilateral agreement making the
14 declaration is in operation in relation to the action.

15 Note 1: Subsection (1) also applies to actions to be taken in an area offshore
16 from a State or the Northern Territory. See section 157.

17 Note 2: Section 47 deals with bilateral agreements making declarations
18 described in paragraph (1)(b).

19 Note 3: Division 3 of Part 5 explains how the operation of a bilateral
20 agreement may be ended or suspended. Also, under section 49,
21 bilateral agreements do not operate in relation to actions in
22 Commonwealth areas, or actions taken by the Commonwealth or a
23 Commonwealth agency, unless they expressly provide that they do.

- 24 (2) If the action is to be taken in 2 or more States or self-governing
25 Territories, this section does not operate unless it operates in
26 relation to each of those States or Territories.

27 **84 This Part does not apply if action covered by declaration**

28 *When this Part does not apply*

- 29 (1) This Part does not apply in relation to an action if:

- 1 (a) the Minister has declared in writing that actions in a class
2 that includes the action need not be assessed under this Part;
3 and
4 (b) the declaration is in operation.

5 *Declaration*

- 6 (2) The Minister may declare in writing that actions in a specified
7 class of actions assessed by the Commonwealth or a
8 Commonwealth agency in a specified manner do not require
9 assessment under this Part.

10 *Prerequisites for making declaration*

- 11 (3) The Minister may only make a declaration if he or she is satisfied
12 that:
13 (a) the specified manner of assessment meets the standards (if
14 any) prescribed by the regulations; and
15 (b) he or she will receive a report of each assessment that is
16 made, in the specified manner, of the relevant impacts of an
17 action he or she has decided under Division 2 of Part 7 is a
18 controlled action; and
19 (c) the report will contain enough information to allow him or
20 her to make an informed decision whether or not to approve
21 under Part 9 (for the purposes of each controlling provision)
22 the taking of the action.

23 *Specified manner of assessment*

- 24 (4) The manner of assessment that may be specified in a declaration
25 includes assessment by a Commonwealth agency under a law of
26 the Commonwealth. This does not limit subsection (2).

27 *Publishing declaration*

- 28 (5) The Minister must publish a declaration in accordance with the
29 regulations.

Chapter 4 Environmental assessments and approvals

Part 8 Assessing impacts of controlled actions

Division 2 Application of this Part

Section 84

1

Revoking declaration

2

(6) The Minister may, by instrument in writing published in

3

accordance with the regulations, revoke a declaration.

4

Minister must not give preference

5

(7) In making or revoking a declaration relating to an action taken:

6

(a) by a person for the purposes of trade between Australia and
another country or between 2 States; or

7

8

(b) by a constitutional corporation;

9

the Minister must not give preference (within the meaning of
section 99 of the Constitution) to one State or part of a State over
another State or part of a State.

10

11

1

2 **Division 3—Decision on assessment approach**

2

3 **Subdivision A—Simplified outline of this Division**

3

4 **85 Simplified outline of this Division**

4

5 The following is a simplified outline of this Division:

5

6 The Minister must choose one of the following ways of assessing
7 the relevant impacts of an action the Minister has decided is a
8 controlled action:

6

7

8

9 (a) a specially accredited process;

9

10 (b) an assessment on preliminary documentation;

10

11 (c) a public environment report;

11

12 (d) an environmental impact statement;

12

13 (e) a public inquiry.

13

14 **Subdivision B—Deciding on approach for assessment**

14

15 **86 Designated proponent must provide preliminary information for**
16 **assessment**

15

16

17 The designated proponent of an action, or a person proposing to
18 take an action, must give the Minister in the prescribed way the
19 prescribed information relating to the action.

17

18

19

20 Note: The Minister must not decide on an approach for assessment until he
21 or she receives information under this section. See subsection 88(1).

20

21

Section 87

1 **87 Minister must decide on approach for assessment**

2 *Minister must choose one assessment approach*

- 3 (1) The Minister must decide which one of the following approaches
4 must be used for assessment of the relevant impacts of the action:
5 (a) assessment by a specially accredited process;
6 (b) assessment on preliminary documentation under Division 4;
7 (c) assessment by public environment report under Division 5;
8 (d) assessment by environmental impact statement under
9 Division 6;
10 (e) assessment by inquiry under Division 7.

11 *Minister must consult before making decision*

- 12 (2) If:
13 (a) the action is to be taken in a State or self-governing Territory
14 and
15 (b) a controlling provision for the action is in Division 1 of Part
16 3 (about matters of national environmental significance);
17 the Minister must invite the appropriate Minister of the State or
18 Territory to provide information relevant to deciding which
19 approach is appropriate, before deciding on the approach to be
20 used for assessment of the relevant impacts of the action.

21 Note: Subsection (2) also applies to actions to be taken in an area offshore
22 from a State or the Northern Territory. See section 157.

23 *Considerations in making choice*

- 24 (3) In making the decision, the Minister must consider:
25 (a) information relating to the action given to the Minister in the
26 referral of the proposal to take the action or under section 86;
27 and
28 (b) any other information available to the Minister about the
29 relevant impacts of the action that the Minister considers
30 relevant (including information in a report on the impacts of
31 actions under a policy, plan or program under which the
-

- 1 action is to be taken that was given to the Minister under an
2 agreement under Part 10 (about strategic assessments)); and
3 (c) any relevant information received in response to an invitation
4 under subsection (2); and
5 (d) the matters (if any) prescribed by the regulations.

6 *Assessment by specially accredited process*

- 7 (4) The Minister may decide on an assessment by a specially
8 accredited process only if the Minister is satisfied that:
9 (a) the process meets the standards (if any) prescribed by the
10 regulations; and
11 (b) the process will adequately assess the relevant impacts of the
12 action; and
13 (c) he or she will receive a report of the outcome of the process
14 that will provide enough information on the relevant impacts
15 of the action to let him or her make an informed decision
16 whether or not to approve under Part 9 (for the purposes of
17 each controlling provision) the taking of the action.

18 *Assessment on preliminary documentation*

- 19 (5) The Minister may decide on an assessment on preliminary
20 documentation under Division 4 only if the Minister is satisfied
21 (after considering the matters in subsection (3)) that that approach
22 will allow the Minister to make an informed decision whether or
23 not to approve under Part 9 (for the purposes of each controlling
24 provision) the taking of the action.

25 **88 Timing of decision on assessment approach**

26 *Initial decision*

- 27 (1) The Minister must decide on the approach to be used for
28 assessment of the relevant impacts of the action within 20 business
29 days after whichever of the following days is later (or either of
30 them if they are the same):

Section 88

- 1 (a) the day the Minister decides under Division 2 of Part 7 that
2 the action is a controlled action;
3 (b) the day the Minister is given information relating to the
4 action as required by section 86.

5 Note: Section 156 sets out rules about time limits.

6 *Extended time if difference of opinion with State or Territory*

- 7 (2) However, subsection (1) has effect as if it referred to 30 business
8 days (instead of 20 business days) if the Minister believes that
9 information provided in response to an invitation under subsection
10 87(2) cannot be considered adequately to make the decision in the
11 time allowed by subsection (1) apart from this subsection.

12 *Subsection (2) does not require decision to be delayed*

- 13 (3) To avoid doubt, subsection (2) does not require the Minister to
14 delay making a decision:
15 (a) until information is received in response to an invitation
16 under subsection 87(2); or
17 (b) until 20 business days after the Minister is given information
18 relating to the action under section 86.

19 *Time does not run while further information sought*

- 20 (4) If the Minister has requested more information under section 89 for
21 the purposes of deciding on the approach to be used for the
22 relevant impacts of the action, a day is not to be counted as a
23 business day for the purposes of subsection (1) if it is:
24 (a) on or after the day the Minister requested the information;
25 and
26 (b) on or before the day on which the Minister receives the last
27 of the information requested.

28 *Running of time may be suspended by agreement*

- 29 (5) The Minister and the designated proponent of the action may agree
30 in writing that days within a period worked out in accordance with
-

1 the agreement are not to be counted as business days for the
2 purposes of subsection (1). If the agreement is made, those days
3 are not to be counted for the purposes of that subsection.

4 **89 Minister may request more information for making decision**

5 If the Minister believes on reasonable grounds that the information
6 given to the Minister in relation to an action is not enough to allow
7 the Minister to make an informed decision on the approach to be
8 used for assessment of the relevant impacts of the action, the
9 Minister may request the designated proponent to provide specified
10 information relevant to making the decision.

11 **90 Directing an inquiry after trying another approach**

12 *Application*

- 13 (1) This section applies if:
- 14 (a) the Minister has made a decision (the *first decision*) under
15 section 87 that the relevant impacts of an action must be
16 assessed by:
 - 17 (i) assessment by public environment report under Division
18 5; or
 - 19 (ii) assessment by environmental impact statement under
20 Division 6; and
 - 21 (b) the designated proponent publishes:
 - 22 (i) a draft report under section 98 (about public
23 environment reports); or
 - 24 (ii) a draft statement under section 103 (about
25 environmental impact statements).

26 *Revoking and substituting decision*

- 27 (2) The Minister may revoke the first decision and make another
28 decision (the *new decision*) under section 87 (in substitution for the
29 first decision) that the relevant impacts of the action must be
30 assessed by an inquiry under Division 7.

Section 91

1 *Effect of revocation and substitution*

- 2 (3) When the first decision is revoked and the new decision is
3 substituted for it:
4 (a) whichever of Divisions 4, 5 and 6 applied in relation to the
5 action because of the first decision ceases to apply in relation
6 to the action; and
7 (b) Division 7 applies in relation to the action.

8 **91 Notice of decision on assessment approach**

- 9 (1) Within 10 business days after making a decision on the approach to
10 be used for assessment of the relevant impacts of an action, the
11 Minister must:
12 (a) give written notice of the decision to:
13 (i) the designated proponent of the action; and
14 (ii) if the action is to be taken in a State or self-governing
15 Territory and a controlling provision for the action is in
16 Division 1 of Part 3 (which deals with matters of
17 national environmental significance)—the appropriate
18 Minister of the State or Territory; and
19 (b) publish notice of the decision in accordance with the
20 regulations.
21 Note 1: Section 156 sets out rules about time limits.
22 Note 2: Subparagraph (1)(a)(ii) also applies to actions to be taken in an area
23 offshore from a State or the Northern Territory. See section 157.
24 (2) If the Minister decided that the relevant impacts of the action are to
25 be assessed by a specially accredited process, the written notice
26 and the published notice must specify the process.

1

2 **Division 4—Assessment on preliminary documentation**

3 **92 Application**

4 This Division applies in relation to an action if the Minister has
5 decided under section 87 that the relevant impacts of the action
6 must be assessed by assessment on preliminary documentation
7 under this Division.

8 **93 Public comment on information included in referral**

- 9 (1) If the Minister directs the designated proponent of the action to do
10 so, the designated proponent must:
- 11 (a) publish in accordance with the regulations:
- 12 (i) specified information included in the referral to the
13 Minister of the proposal to take the action; and
- 14 (ii) specified information that was given to the Minister
15 under section 86; and
- 16 (iii) specified information relating to the action that was
17 given to the Minister after the referral but before the
18 Minister made the decision under section 87; and
- 19 (iv) an invitation for anyone to give the designated
20 proponent comments relating to the information or the
21 action within a period of the length specified in the
22 Minister's direction; and
- 23 (b) give to the Minister a copy and summary of any comments
24 received within the period specified in the invitation.
- 25 (2) The Minister may only give the designated proponent a direction
26 within 10 business days after deciding under section 87 that the
27 relevant impacts of the action must be assessed by assessment on
28 preliminary documentation under this Division.

Section 94

1 **94 Revised documentation**

- 2 (1) After the period for comment, the designated proponent must give
3 the Minister:
- 4 (a) a document that sets out the information provided to the
5 Minister previously in relation to the action, with any
6 changes or additions needed to take account of any
7 comments received by the designated proponent; or
8 (b) if the designated proponent did not receive any comments—a
9 written statement to that effect.
- 10 (2) The Minister may refuse to accept a document referred to in
11 paragraph (1)(a) if he or she believes on reasonable grounds that it
12 is inadequate for the purposes of making an informed decision on
13 approving under Part 9 (for the purposes of each controlling
14 provision) the taking of the action.

15 **95 Assessment report**

16 *Preparation*

- 17 (1) The Secretary must prepare, and give to the Minister, a report
18 relating to the action within 20 business days after:
- 19 (a) the day on which the Minister decided under section 87 that
20 the relevant impacts of the action must be assessed by
21 assessment on preliminary documentation under this
22 Division; or
23 (b) if the designated proponent was required under section 93 to
24 invite comments on the action and has received comments—
25 the day the Minister accepted from the designated proponent
26 the document described in paragraph 94(1)(a); or
27 (c) if the designated proponent was required under section 93 to
28 invite comments on the action and did not receive any
29 comments—the day the designated proponent gave the
30 Minister the statement to that effect under paragraph
31 94(1)(b).

1

Publication

2

- (2) The Secretary must provide to a person who asks for the report a copy of it (either free or at a reasonable charge determined by the Secretary).

3

4

5

Limits on publication

6

- (3) However, the Secretary must not provide under subsection (2) so much of the report as is an exempt document under the *Freedom of Information Act 1982* on the grounds of:

7

8

9

10

11

(a) commercial confidence; or

(b) the security of the Commonwealth; or

(c) its providing advice to the Minister.

Section 96

1

2

Division 5—Public environment reports

3

96 Application

4

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by a public environment report under this Division.

5

6

7

8

97 Minister must prepare guidelines for draft public environment report

9

10

(1) The Minister must prepare written guidelines for the content of a draft report about the relevant impacts of the action.

11

12

(2) In preparing the guidelines, the Minister must seek to ensure that the draft report will:

13

14

(a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and

15

16

17

18

(b) address the matters (if any) prescribed by the regulations.

19

(3) The guidelines may also provide for the draft report to include information about other certain and likely impacts of the action if:

20

21

(a) the action is to be taken in a State or self-governing Territory:

22

23

(i) by a constitutional corporation; or

24

(ii) by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories; and

25

26

27

28

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft report includes information about those other impacts to help

29

30

1 the State or Territory, or an agency of the State or Territory,
2 make decisions about the action.

3 Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore
4 from a State or the Northern Territory. See section 157.

5 (4) Division 2 does not limit:

- 6 (a) subsection (3); or
7 (b) section 98 so far as it relates to guidelines prepared in
8 reliance on that subsection.

9 (5) In preparing the guidelines, the Minister may:

- 10 (a) invite anyone to comment on a draft of the guidelines within
11 a period specified by the Minister; and
12 (b) take account of the comments received (if any).

13 **98 Designated proponent must invite comment on draft public** 14 **environment report**

15 *Designated proponent's obligations*

16 (1) The designated proponent of the action must:

- 17 (a) prepare a draft report about the relevant impacts of the action
18 (and any other impacts mentioned under subsection 97(3) in
19 the guidelines for the content of the draft report); and
20 (b) obtain the Minister's approval for publication of the draft
21 report; and
22 (c) publish in accordance with the regulations:
23 (i) the draft report; and
24 (ii) an invitation for anyone to give the designated
25 proponent comments relating to the draft report or the
26 action within the period specified in the invitation; and
27 (d) give the Minister a copy and summary of the comments (if
28 any) received within the period specified in the invitation.

Section 99

1 *Approval of publication of draft report*

- 2 (2) The Minister may only approve the publication of the draft report
3 if he or she is satisfied that the draft report adequately addresses
4 the guidelines for the content of the draft report.

5 *Period for comment*

- 6 (3) The period specified in the invitation to comment must be the
7 period specified in writing given by the Minister to the designated
8 proponent. The Minister must not specify a period of less than 20
9 business days.

10 **99 Finalising public environment report**

11 *Designated proponent must finalise report*

- 12 (1) After the end of the period specified in the invitation to comment
13 under section 98, the designated proponent must finalise the draft
14 report, taking account of the comments received (if any), and give
15 the finalised report to the Minister.

16 *Form of finalised report*

- 17 (2) The designated proponent may give the finalised report to the
18 Minister in the form of:
19 (a) a revised version of the draft report; or
20 (b) the draft report and a supplement to the draft report.

21 *Refusal to accept finalised report*

- 22 (3) The Minister may refuse to accept the finalised report if he or she
23 is satisfied on reasonable grounds that the finalised report is
24 inadequate for the purposes of making an informed decision on
25 approving under Part 9 (for the purposes of each controlling
26 provision) the taking of the action.

1 *Publication of finalised report*

- 2 (4) After the Minister has accepted the finalised report, the designated
3 proponent must publish it in accordance with the regulations.

4 **100 Assessment report**

5 *Preparation*

- 6 (1) The Secretary must prepare, and give to the Minister, a report
7 relating to the action within 20 business days after the day on
8 which the Minister accepted the finalised report from the
9 designated proponent.

10 *Publication*

- 11 (2) The Secretary must provide to a person who asks for the report a
12 copy of it (either free or at a reasonable charge determined by the
13 Secretary).

14 *Limits on publication*

- 15 (3) However, the Secretary must not provide under subsection (2) so
16 much of the report as is an exempt document under the *Freedom of*
17 *Information Act 1982* on the grounds of:
18 (a) commercial confidence; or
19 (b) the security of the Commonwealth; or
20 (c) its providing advice to the Minister.

Section 101

1

2

Division 6—Environmental impact statements

3

101 Application

4

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by an environmental impact statement under this Division.

5

6

7

8

102 Minister must prepare guidelines for draft environmental impact statement

9

10

(1) The Minister must prepare written guidelines for the content of a draft statement about the action and its relevant impacts.

11

12

(2) In preparing the guidelines, the Minister must seek to ensure that the draft statement will:

13

14

(a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and

15

16

17

18

(b) address any matters specified by the regulations.

19

(3) The guidelines may also provide for the draft statement to include information about other certain and likely impacts of an action if:

20

21

(a) the action is to be taken in a State or self-governing Territory:

22

23

(i) by a constitutional corporation; or

24

(ii) by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories; and

25

26

27

28

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft statement includes information about those other impacts to

29

30

1 help the State or Territory, or an agency of the State or
2 Territory, make decisions about the action.

3 Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore
4 from a State or the Northern Territory. See section 157.

5 (4) Division 2 does not limit:

- 6 (a) subsection (3); or
7 (b) section 103 so far as it relates to guidelines prepared in
8 reliance on that subsection.

9 (5) In preparing the guidelines, the Minister may:

- 10 (a) invite anyone to comment on a draft of the guidelines within
11 a period specified by the Minister; and
12 (b) take account of the comments (if any) received.

13 **103 Designated proponent must invite comment on draft** 14 **environmental impact statement**

15 *Designated proponent's obligations*

16 (1) The designated proponent of the action must:

- 17 (a) prepare a draft statement about the relevant impacts of the
18 action (and any other impacts mentioned under subsection
19 102(3) in the guidelines for the content of the draft
20 statement); and
21 (b) obtain the Minister's approval for publication of the draft
22 statement; and
23 (c) publish in accordance with the regulations:
24 (i) the draft statement; and
25 (ii) an invitation for anyone to give the designated
26 proponent comments relating to the draft statement or
27 the action within the period specified in the invitation;
28 and
29 (d) give the Minister a copy and summary of the comments (if
30 any) received within the period specified in the invitation.

Section 104

1 *Approval of publication of draft statement*

- 2 (2) The Minister may only approve the publication of the draft
3 statement if he or she is satisfied that the draft statement
4 adequately addresses the guidelines for the content of the draft
5 statement.

6 *Period for comment*

- 7 (3) The period specified in the invitation to comment must be the
8 period specified in writing given by the Minister to the designated
9 proponent. The Minister must not specify a period of less than 20
10 business days.

11 **104 Finalising draft environmental impact statement**

12 *Designated proponent must finalise statement*

- 13 (1) After the period specified in the invitation to comment under
14 section 103, the designated proponent must:
15 (a) finalise the draft statement, taking account of the comments
16 (if any) received in response to the invitation; and
17 (b) give the finalised statement to the Minister.

18 *Form of finalised statement*

- 19 (2) The designated proponent may give the finalised statement to the
20 Minister in the form of:
21 (a) a revised version of the draft statement; or
22 (b) the draft statement and a supplement to the draft statement.

23 *Refusal to accept finalised statement*

- 24 (3) The Minister may refuse to accept the finalised statement if he or
25 she is satisfied on reasonable grounds that it is inadequate for the
26 purposes of making an informed decision on approving under Part
27 9 (for the purposes of each controlling provision) the taking of the
28 action.

1 *Publication of finalised statement*

- 2 (4) After the Minister has accepted the finalised statement, the
3 designated proponent must publish it in accordance with the
4 regulations.

5 **105 Assessment report**

6 *Preparation*

- 7 (1) The Secretary must prepare, and give to the Minister, a report
8 relating to the action within 30 business days after the day on
9 which the Minister accepted from the designated proponent the
10 finalised statement.

11 *Publication*

- 12 (2) The Secretary must provide to a person who asks for the report a
13 copy of it (either free or at a reasonable charge determined by the
14 Secretary).

15 *Limits on publication*

- 16 (3) However, the Secretary must not provide under subsection (2) so
17 much of the report as is an exempt document under the *Freedom of*
18 *Information Act 1982* on the grounds of:
19 (a) commercial confidence; or
20 (b) the security of the Commonwealth; or
21 (c) its providing advice to the Minister.

Section 106

1

2 **Division 7—Inquiries**

3 **Subdivision A—Preliminary**

4 **106 Simplified outline**

5 The following is a simplified outline of this Division:

6 This Division provides for the Minister to appoint commissions to
7 carry out inquiries in a flexible way into the impacts of actions.

8 Commissioners have powers to call witnesses, obtain documents
9 and inspect places for the purposes of their inquiries.

10 Commissioners must report to the Minister and publish their
11 reports.

12 **Subdivision B—Establishment of inquiries**

13 **107 Appointing commissioners and setting terms of reference**

14 (1) If the Minister decides that the relevant impacts of an action must
15 be assessed by inquiry under this Division, the Minister must:

16 (a) appoint in writing one or more persons (the *commissioners*)
17 as a commission to conduct the inquiry and report to the
18 Minister in relation to the action; and

19 (b) specify in writing (the *terms of reference*):

20 (i) the matters relating to the action that are to be the
21 subject of the inquiry and report; and

22 (ii) the period within which the commission must report to
23 the Minister.

24 Note 1: The Minister may revoke an appointment and amend terms of
25 reference. See subsection 33(3) of the *Acts Interpretation Act 1901*.

26 Note 2: Subdivision E contains more provisions about the basis on which a
27 commissioner holds office.

Section 108

- 1 (2) If the Minister appoints 2 or more commissioners for an inquiry,
2 the Minister must appoint one of them to preside at the inquiry.
- 3 (3) In specifying in the terms of reference the matters relating to the
4 action that are to be the subject of the inquiry and report, the
5 Minister:
6 (a) must specify the relevant impacts of the action; and
7 (b) may specify other certain or likely impacts of the action.
- 8 (4) However, the Minister may specify other certain or likely impacts
9 of the action only if:
10 (a) the action is to be taken in a State or self-governing
11 Territory:
12 (i) by a constitutional corporation; or
13 (ii) by any person for the purposes of trade or commerce
14 between Australia and another country, between 2
15 States, between a State and a Territory or between 2
16 Territories; and
17 (b) the appropriate Minister of the State or Territory has asked
18 the Minister administering this section to ensure that the
19 inquiry reports on those other impacts to help the State or
20 Territory, or an agency of the State or Territory, make
21 decisions about the action.
- 22 Note: Paragraph (4)(a) also applies to actions to be taken in an area offshore
23 from a State or the Northern Territory. See section 157.
- 24 (5) The Minister may also specify in the terms of reference the manner
25 in which the commission is to carry out the inquiry.

26 **108 Publicising inquiry**

- 27 (1) As soon as practicable, the commission must publish in accordance
28 with the regulations and in any other way it thinks fit:
29 (a) the terms of reference; and
30 (b) the information relating to the action given to the Minister
31 under this Chapter before the Minister made the decision

Section 111

- 1 (3) If the commission believes that it is desirable in the public interest,
2 the commission may:
3 (a) give directions that all or part of the inquiry be held in
4 private, specifying the persons who may be present; and
5 (b) give directions prohibiting or restricting the publication of all
6 or specified passages of submissions or evidence given to the
7 commission orally or in writing.

8 **111 Calling witnesses**

9 *Summoning witnesses*

- 10 (1) A commissioner may, by writing signed by the commissioner,
11 summon a person to appear before the commission at a time and
12 place specified in the summons to give evidence and produce any
13 documents mentioned in the summons.

14 *Failure of witness to attend*

- 15 (2) A person served with a summons to appear as a witness at an
16 inquiry by a commission must not:
17 (a) fail to attend as required by the summons; or
18 (b) fail to appear and report from day to day unless excused or
19 released from further attendance by or on behalf of the
20 commission.

21 Note: A defendant bears an evidential burden in relation to the excuse or
22 release from further attendance mentioned in paragraph (2)(b). See
23 subsection 13.3(3) of the *Criminal Code*.

24 *Offence*

- 25 (3) A person who contravenes subsection (2) is guilty of an offence
26 punishable on conviction by imprisonment for not more than 6
27 months, a fine of not more than 30 penalty units, or both.

Section 112

1 *Allowances for witnesses*

- 2 (4) A person summoned by a commission to appear as a witness at an
3 inquiry is entitled to be paid by the Commonwealth such
4 allowances for travelling and other expenses as are prescribed by
5 the regulations.

6 **112 Dealing with witnesses**

7 *Power to administer oath or affirmation*

- 8 (1) A commissioner may administer an oath or affirmation to a person
9 appearing as a witness before the commission.

10 Note: This means that proceedings before the commission are *judicial*
11 *proceedings* for the purposes of Part III of the *Crimes Act 1914*, which
12 creates various offences relating to judicial proceedings.

13 *Refusal to be sworn or to answer questions*

- 14 (2) A person appearing as a witness at an inquiry by a commission
15 must not:
16 (a) refuse or fail to be sworn or to make an affirmation; or
17 (b) refuse or fail to answer a question that the person is required
18 to answer by the commissioner (or the commissioner
19 presiding at the inquiry if there is more than one
20 commissioner for the inquiry); or
21 (c) refuse or fail to produce a document that the person was
22 required to produce by a summons served on the person.

23 *Offence*

- 24 (3) A person who contravenes subsection (2) is guilty of an offence
25 punishable on conviction by imprisonment for not more than 6
26 months, a fine of not more than 30 penalty units, or both.

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

1 *No privilege against self-incrimination*

- 2 (4) An individual is not excused from answering a question or
3 producing a document on the ground that answering the question or
4 producing the document would tend to incriminate the individual
5 or to expose the individual to a penalty.

6 *Answers and documents cannot be used in criminal proceedings*

- 7 (5) However, none of the following is admissible in evidence in
8 criminal proceedings against the individual (except proceedings
9 under section 491):
10 (a) the answer to the question;
11 (b) the production of the document;
12 (c) any information, document or thing obtained as a direct or
13 indirect consequence of answering the question or producing
14 the document.

15 *Sworn witnesses may also give written evidence on oath*

- 16 (6) A commission may permit a person who is appearing as a witness
17 before the commission and has been sworn or has made an
18 affirmation to give evidence by tendering a written statement and
19 verifying it by oath or affirmation.

20 **113 Dealing with documents given to commission**

21 *Inspecting and copying documents produced or given at inquiry*

- 22 (1) A commissioner, or a person assisting a commission and
23 authorised by a commissioner to do so, may:
24 (a) inspect a document produced or given to the commission;
25 and
26 (b) make a copy of, or take an extract from, the document.

Section 114

1 *Keeping documents produced or given at inquiry*

2 (2) A commission may keep for a reasonable period a document
3 produced or given to the commission.

4 **114 Inspections of land, buildings and places**

5 (1) If a commissioner, or a person authorised by a commissioner,
6 enters any land, building or place by consent as described in
7 section 115 or under a warrant issued under section 116, the
8 commissioner or person may:

9 (a) inspect the land, building or place; and

10 (b) inspect any material on the land, or on or in the building or
11 place.

12 (2) However, the commissioner or authorised person may not make the
13 inspection if:

14 (a) the person occupying or in charge of the land, building or
15 place asks the commissioner or authorised person to produce
16 his or her identity card or other written evidence of his or her
17 identity; and

18 (b) the commissioner or person does not produce it.

19 (3) A person (the *offender*) is guilty of an offence punishable on
20 conviction by imprisonment for not more than 6 months if:

21 (a) the offender obstructs or hinders another person; and

22 (b) the offender knows the other person is a commissioner, or a
23 person authorised by a commissioner, acting under
24 subsection (1) or a warrant issued under section 116.

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

27 Note 2: Subsection 4B(2) of the *Crimes Act 1914* lets a court that convicts an
28 individual of an offence impose a fine instead of, or as well as,
29 imprisonment. The maximum fine (in penalty units) the court can
30 impose is 5 times the maximum term of imprisonment (in months).

1 **115 Entering premises by consent**

- 2 (1) A commissioner, or a person authorised by a commissioner, may
3 enter land, a building or a place at any reasonable time for any
4 reasonable purpose of an inquiry, if the person (the *occupant*)
5 occupying or in charge of the land, building or place consents.
- 6 (2) Before obtaining the consent, the commissioner or authorised
7 person must inform the occupant that the occupant may refuse to
8 give consent.
- 9 (3) The commissioner or authorised person may not enter the land,
10 building or place if:
11 (a) the occupant asks the commissioner or authorised person to
12 produce his or her identity card or other written evidence of
13 his or her identity; and
14 (b) the commissioner or authorised person does not produce it.
- 15 (4) An entry by a commissioner or authorised person with the
16 occupant's consent is not lawful if the occupant's consent was not
17 voluntary.

18 **116 Entering premises under warrant**

- 19 (1) A commissioner may apply to a magistrate for a warrant
20 authorising the commissioner or a person authorised by the
21 commissioner to enter any land, building or place if the
22 commissioner has reason to believe that it is necessary or desirable
23 for the purposes of an inquiry for the commissioner or person to
24 enter the land, building or place for the purposes of the inquiry.
- 25 Note: Section 117 allows applications for warrants to be made by telephone.
- 26 (2) If the magistrate is satisfied by information on oath or affirmation
27 that the issue of the warrant is reasonably required for the purposes
28 of the inquiry, he or she may grant a warrant authorising the person
29 named in the warrant to enter the land, building or place for the
30 purposes specified in the warrant.

Section 117

- 1 (3) The magistrate must specify in the warrant the date after which the
2 warrant ceases to have effect.
- 3 (4) The person named in a warrant may not enter the land, building or
4 place if:
- 5 (a) the person occupying or in charge of the land, building or
6 place asks the person named in the warrant to produce his or
7 her identity card or other written evidence of his or her
8 identity; and
9 (b) the person named in the warrant does not produce it.

10 **117 Warrants by telephone or other electronic means**

11 *Application*

- 12 (1) A commissioner may apply to a magistrate for a warrant by
13 telephone, telex, facsimile or other electronic means:
- 14 (a) in an urgent case; or
15 (b) if the delay that would occur if an application were made in
16 person would frustrate the effective execution of the warrant.

17 *Voice communication*

- 18 (2) The magistrate may require communication by voice to the extent
19 that is practicable in the circumstances.

20 *Information*

- 21 (3) An application under this section must include all information
22 required to be provided in an ordinary application for a warrant,
23 but the application may, if necessary, be made before the
24 information is sworn or affirmed.

25 *Issue of warrant*

- 26 (4) The magistrate may complete and sign the same form of warrant
27 that would be issued under section 116 if, after considering the

Section 117

- 1 information and having received and considered any further
2 information he or she required, the magistrate is satisfied that:
3 (a) a warrant in the terms of the application should be issued
4 urgently; or
5 (b) the delay that would occur if an application were made in
6 person would frustrate the effective execution of the warrant.

7 *Notification*

- 8 (5) If the magistrate decides to issue the warrant, the magistrate must
9 inform the applicant, by telephone, telex, facsimile or other
10 electronic means, of the terms of the warrant and the day on which
11 and the time at which it was signed.

12 *Form of warrant*

- 13 (6) The applicant must then complete a form of warrant in terms
14 substantially corresponding to those given by the magistrate,
15 stating on the form the name of the magistrate and the day on
16 which and the time at which the warrant was signed.

17 *Completed form of warrant to be given to magistrate*

- 18 (7) The applicant must, not later than the day after the day of expiry of
19 the warrant or the day after the day on which the warrant was
20 executed, whichever is the earlier, give or transmit to the
21 magistrate:
22 (a) the form of warrant completed by the applicant; and
23 (b) if the information referred to in subsection (3) was not sworn
24 or affirmed—that information duly sworn or affirmed.

25 *Attachment*

- 26 (8) The magistrate must attach to the documents provided under
27 subsection (7) the form of warrant completed by the magistrate.

Section 118

1 *Presumption*

2 (9) If:

3 (a) it is material, in any proceedings, for a court to be satisfied
4 that the exercise of a power under a warrant issued under this
5 section was duly authorised; and

6 (b) the form of warrant signed by the magistrate is not produced
7 in evidence;

8 the court is to assume, unless the contrary is proved, that the
9 exercise of the power was not duly authorised.

10 **118 Identity cards**

11 (1) The Minister may cause to be issued to a commissioner or a person
12 authorised by a commissioner an identity card:

13 (a) in a form approved by the Minister; and

14 (b) containing a recent photograph of the person to whom it is
15 issued.

16 (2) As soon as practicable after the commission to which the
17 commissioner was appointed has reported to the Minister on its
18 inquiry, the commissioner or authorised person must return his or
19 her identity card to the Minister.

20 (3) A person must not contravene subsection (2).

21 Penalty: 1 penalty unit.

22 **119 Contempt**

23 (1) A person is guilty of an offence punishable on conviction by a fine
24 of not more than 30 penalty units if:

25 (a) the person insults, disturbs or uses insulting language
26 towards another person; and

27 (b) the person knows the other person is a commissioner
28 exercising the powers or performing the functions or duties
29 of a commissioner.

Section 120

- 1 (2) A person is guilty of an offence punishable on conviction by a fine
2 of not more than 30 penalty units if:
3 (a) the person creates a disturbance, or takes part in creating or
4 continuing a disturbance, in or near a place; and
5 (b) the person knows the place is a place where a commission is
6 holding an inquiry.
- 7 (3) A person must not:
8 (a) interrupt an inquiry by a commission; or
9 (b) do any other act or thing that would, if a commission were a
10 court of record, constitute a contempt of that court.
- 11 Penalty: 30 penalty units.

12 **120 Protection of commissioners and witnesses**

13 *Protection of commissioners*

- 14 (1) In performing his or her duties as a commissioner, a commissioner
15 has the same protection and immunity as a Justice of the High
16 Court.

17 *Rights and obligations of witnesses*

- 18 (2) A person appearing before a commission as a witness at an inquiry:
19 (a) has the same protection as a witness in proceedings in the
20 High Court; and
21 (b) is subject to the same liabilities in any civil or criminal
22 proceedings as such a witness (in addition to the penalties
23 provided by this Division).

24 *Interfering with witness is an offence*

- 25 (3) A person must not:
26 (a) use violence to or inflict injury on; or
27 (b) cause or procure violence, damage, loss or disadvantage to;
28 or

Section 120

- 1 (c) cause or procure the punishment of;
2 another person (the *witness*) because the witness will appear or did
3 appear as a witness at an inquiry or because of any submission or
4 evidence the witness gave to a commission.

5 *Interference with a witness' employment*

- 6 (4) An employer must not dismiss an employee, or prejudice an
7 employee in his or her employment, because the employee
8 appeared as a witness or gave any submission or evidence at an
9 inquiry by a commission.

10 *Interference with employee who proposes to give evidence*

- 11 (5) An employer must not dismiss or threaten to dismiss an employee
12 or prejudice, or threaten to prejudice, an employee in his or her
13 employment, because the employee proposes to appear as a witness
14 or to give a submission or evidence at an inquiry by a commission.

15 *Offences*

- 16 (6) A person who contravenes subsection (3), (4) or (5) is guilty of an
17 offence punishable on conviction by imprisonment for not more
18 than 6 months, a fine of not more than 30 penalty units, or both.

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

22 *Burden of proof in proceedings relating to witness*

- 23 (7) In proceedings arising out of subsection (4), the employer has the
24 burden of proving that the employee was not dismissed or
25 prejudiced because the employee appeared as a witness or gave a
26 submission or evidence at an inquiry by a commission, if it is
27 established that:
28 (a) the employee was dismissed from, or prejudiced in, his or her
29 employment; and

- 1 (b) before the employee was dismissed or prejudiced, the
2 employee appeared as a witness, or gave any submission or
3 evidence, at an inquiry by a commission.

4 *Burden of proof in proceedings relating to employee proposing to*
5 *give evidence*

- 6 (8) In any proceedings arising out of subsection (5), the employer has
7 the burden of proving that the employee was not dismissed,
8 prejudiced in his or her employment or threatened with dismissal
9 or prejudice because the employee proposed to appear as a witness
10 or give evidence at an inquiry by a commission, if it is established
11 that:

- 12 (a) the employee was dismissed, prejudiced or threatened; and
13 (b) the employee made the proposal before the employee was
14 dismissed, prejudiced or threatened.

15 *Relationship of subsections (3), (4) and (5)*

- 16 (9) Subsections (4) and (5) do not limit subsection (3).

17 **Subdivision D—Inquiry reports**

18 **121 Timing of report**

19 The commission must report to the Minister on the inquiry within
20 the period specified by the Minister in the terms of reference.

21 **122 Publication of report**

- 22 (1) After reporting to the Minister, the commission must publish the
23 report in accordance with the regulations.
- 24 (2) However, the commission must not publish the report so far as it
25 sets out any submission or evidence whose publication the
26 commission prohibited or restricted by a direction under paragraph
27 110(3)(b).

Section 123

1 **Subdivision E—Commissioners’ terms and conditions**

2 **123 Basis of appointment**

- 3 (1) A commissioner is to be appointed on a full-time basis or a
4 part-time basis.
- 5 (2) A commissioner appointed on a full-time basis must not engage in
6 paid employment outside the duties of the commissioner’s office
7 without the Minister’s approval.
- 8 (3) A commissioner appointed on a part-time basis must not engage in
9 any paid employment that, in the Minister’s opinion, conflicts or
10 may conflict with the proper performance of the commissioner’s
11 duties.

12 **124 Remuneration**

- 13 (1) A commissioner who is not appointed or employed under the
14 *Public Service Act 1922* is to be paid the remuneration that is
15 determined by the Remuneration Tribunal. If no determination of
16 that remuneration is in operation, the commissioner is to be paid
17 the remuneration that is prescribed.
- 18 (2) A commissioner is to be paid the allowances that are prescribed.
- 19 (3) This section has effect subject to the *Remuneration Tribunal Act*
20 *1973*.

21 **125 Leave of absence**

- 22 (1) Subject to section 87E of the *Public Service Act 1922*, a
23 commissioner appointed on a full-time basis has the recreation
24 leave entitlements that are determined by the Remuneration
25 Tribunal.
- 26 (2) The Minister may grant a commissioner appointed on a full-time
27 basis leave of absence, other than recreation leave, on the terms

1 and conditions as to remuneration or otherwise that the Minister
2 determines.

3 (3) The commissioner (the *presiding commissioner*) appointed to
4 preside at an inquiry may grant leave of absence to any other
5 commissioner for the inquiry on the terms and conditions that the
6 presiding commissioner determines, if the other commissioner has
7 been appointed on a part-time basis.

8 **126 Resignation**

9 A commissioner may resign his or her appointment by giving the
10 Minister a written resignation.

11 **127 Termination of appointment**

12 (1) The Minister may terminate a commissioner's appointment for
13 misbehaviour or physical or mental incapacity.

14 (2) The Minister must terminate the appointment of a commissioner if:

15 (a) the commissioner:

16 (i) becomes bankrupt; or

17 (ii) applies to take the benefit of any law for the relief of
18 bankrupt or insolvent debtors; or

19 (iii) compounds with his or her creditors; or

20 (iv) makes an assignment of his or her remuneration for the
21 benefit of his or her creditors; or

22 (b) the commissioner fails, without reasonable excuse, to comply
23 with section 128 (about disclosure of interests); or

24 (c) the Minister becomes aware that the commissioner has a
25 pecuniary or other interest in the subject-matter of the inquiry
26 and the Minister considers that the commissioner should not
27 continue to participate in the conduct of the inquiry.

28 (3) The Minister must terminate the appointment of a commissioner on
29 a full-time basis if:

Section 128

- 1 (a) the commissioner is absent, except on leave of absence, for
2 14 consecutive days or for 28 days in any 12 months; or
3 (b) the commissioner engages, except with the Minister's
4 approval, in paid employment outside the duties of his or her
5 office.
- 6 (4) The Minister must terminate the appointment of a commissioner on
7 a part-time basis if:
8 (a) the commissioner is absent, except on leave of absence, from
9 3 consecutive meetings of his or her commission (if it
10 consists of 2 or more commissioners); or
11 (b) the commissioner engages in paid employment that, in the
12 Minister's opinion, conflicts or could conflict with the proper
13 performance of the duties of his or her office.

14 **128 Disclosure of interests**

- 15 (1) A commissioner must give written notice to the Minister of all
16 direct and indirect pecuniary interests that he or she has or acquires
17 in a business or in a body corporate carrying on a business.
- 18 (2) If a commissioner has or acquires an interest, pecuniary or
19 otherwise, that could conflict with the proper performance of his or
20 her duties, he or she must:
21 (a) inform the Minister of the interest; and
22 (b) ensure that the interest is disclosed in the report of his or her
23 inquiry.

24 **129 Other terms and conditions**

25 A commissioner holds office on the terms and conditions (if any)
26 in relation to matters not covered by this Act that are determined
27 by the Minister.

1

2 **Part 9—Approval of actions**

3 **Division 1—Decisions on approval and conditions**

4 **Subdivision A—General**

5 **130 Timing of decision on approval**

6 *Basic rule*

7 (1) The Minister must decide within whichever of the following
8 periods is relevant whether or not to approve the taking of a
9 controlled action:

- 10 (a) 30 business days, or such longer period as the Minister
11 specifies in writing, starting on the first business day after the
12 Minister receives an assessment report relating to the action;
13 (b) 40 business days, or such longer period as the Minister
14 specifies in writing, starting on the first business day after the
15 Minister receives a report of a commission that has
16 conducted an inquiry relating to the action.

17 Note: Section 156 sets out rules about time limits.

18 *What is an assessment report?*

19 (2) An **assessment report** is a report given to the Minister as described
20 in:

- 21 (a) subsection 47(4) (about assessments under a bilateral
22 agreement); or
23 (b) subsection 84(3) (about assessments in a manner specified in
24 a declaration); or
25 (c) subsection 87(4) (about assessments by specially accredited
26 processes); or
27 (d) subsection 95(1) (about assessments on preliminary
28 documentation); or
29 (e) subsection 100(1) (about public environment reports); or
-

Section 131

1 (f) subsection 105(1) (about environmental impact statements).

2 *Time may be extended only to consider other Ministers' comments*

3 (3) The Minister may specify a longer period for the purposes of
4 paragraph (1)(a) or (b) only if:

5 (a) the Minister has received comments about a proposed
6 decision from another Minister in accordance with an
7 invitation under section 131; and

8 (b) the Minister is satisfied that it would not be practicable to
9 consider them adequately and make a decision within the
10 period that would apply if the longer period were not
11 specified.

12 *Notice of extension of time*

13 (4) If the Minister specifies a longer period for the purposes of
14 paragraph (1)(a) or (b), he or she must:

15 (a) give a copy of the specification to the person proposing to
16 take the action; and

17 (b) publish the specification in accordance with the regulations.

18 *Time does not run while further information is sought*

19 (5) If, under section 132, the Minister has requested more information
20 for the purposes of making a decision whether or not to approve
21 the taking of an action, a day is not to be counted as a business day
22 for the purposes of subsection (1) if it is:

23 (a) on or after the day the Minister requested the information;
24 and

25 (b) on or before the day on which the Minister receives the last
26 of the information requested.

27 **131 Inviting comments from other Ministers before decision**

28 (1) Before the Minister (the *Environment Minister*) decides whether
29 or not to approve the taking of an action, and what conditions (if
30 any) to attach to an approval, he or she must:

Section 132

- 1 (a) inform any other Minister whom the Environment Minister
2 believes has administrative responsibilities relating to the
3 action of the decision the Environment Minister proposes to
4 make; and
5 (b) invite the other Minister to give the Environment Minister
6 comments on the proposed decision within 10 business days.

- 7 (2) A Minister invited to comment may make comments that:
8 (a) relate to economic and social matters relating to the action;
9 and
10 (b) may be considered by the Environment Minister consistently
11 with the principles of ecologically sustainable development.
12 This does not limit the comments such a Minister may give.

13 **132 Requesting further information for approval decision**

14 If the Minister believes on reasonable grounds that he or she does
15 not have enough information to make an informed decision
16 whether or not to approve for the purposes of a controlling
17 provision the taking of an action, the Minister may request any of
18 the following to provide specified information relevant to making
19 the decision:

- 20 (a) the person proposing to take the action;
21 (b) the designated proponent of the action;
22 (c) if a commission has conducted an inquiry under Division 7 of
23 Part 8 relating to the action—the commission.

24 **133 Grant of approval**

25 *Approval*

- 26 (1) The Minister may approve for the purposes of a controlling
27 provision the taking of a controlled action by a person.

28 *Content of approval*

- 29 (2) An approval must:
-

Section 134

- 1 (a) be in writing; and
2 (b) specify the action that may be taken; and
3 (c) name the person who may take the action; and
4 (d) specify each provision of Part 3 for which the approval has
5 effect; and
6 (e) specify the period for which the approval has effect; and
7 (f) set out any conditions attached to the approval.

8 *Notice of approval*

- 9 (3) The Minister must:
10 (a) give a copy of the approval to the person; and
11 (b) provide a copy of the approval to a person who asks for it
12 (either free or for a reasonable charge determined by the
13 Minister).

14 *Limit on publication of approval*

- 15 (4) However, the Minister must not provide under subsection (3) a
16 copy of so much of the approval as:
17 (a) is an exempt document under the *Freedom of Information*
18 *Act 1982* on the grounds of commercial confidence; or
19 (b) the Minister believes it is in the national interest not to
20 provide.

21 The Minister may consider the defence or security of the
22 Commonwealth when determining what is in the national interest.
23 This does not limit the matters the Minister may consider.

24 **134 Attaching conditions to approval**

25 *Generally*

- 26 (1) The Minister may attach a condition to the approval of the action if
27 he or she is satisfied that the condition is necessary or convenient
28 for:

Section 134

- 1 (a) protecting a matter protected by a provision of Part 3 for
2 which the approval has effect; or
3 (b) repairing or mitigating damage to a matter protected by a
4 provision of Part 3 for which the approval has effect (whether
5 or not the damage has been, will be or is likely to be caused
6 by the action).

7 *Conditions to protect matters from the approved action*

- 8 (2) The Minister may attach a condition to the approval of the action if
9 he or she is satisfied that the condition is necessary or convenient
10 for:
11 (a) protecting from the action any matter protected by a
12 provision of Part 3 for which the approval has effect; or
13 (b) repairing or mitigating damage that may or will be, or has
14 been, caused by the action to any matter protected by a
15 provision of Part 3 for which the approval has effect.

16 This subsection does not limit subsection (1).

17 *Other conditions that may be attached to approval*

- 18 (3) The conditions that may be attached to an approval include:
19 (a) conditions relating to any security to be given by the person
20 by bond, guarantee or cash deposit:
21 (i) to comply with this Act and the regulations; and
22 (ii) not to contravene a condition attached to the approval;
23 and
24 (iii) to meet any liability of the person whose taking of the
25 action is approved to the Commonwealth for measures
26 taken by the Commonwealth under section 499 (which
27 lets the Commonwealth repair and mitigate damage
28 caused by a contravention of this Act) in relation to the
29 action; and
30 (b) conditions requiring the person to insure against any
31 specified liability of the person to the Commonwealth for
32 measures taken by the Commonwealth under section 499 in
33 relation to the approved action; and
-

Section 135

- 1 (c) conditions requiring the person taking the action to comply
2 with conditions specified in an instrument (including any
3 kind of authorisation) made or granted under a law of a State
4 or self-governing Territory or another law of the
5 Commonwealth; and
- 6 (d) conditions requiring an environmental audit of the action to
7 be carried out periodically by a person who can be regarded
8 as being independent from the person whose taking of the
9 action is approved; and
- 10 (e) conditions requiring the preparation, submission for approval
11 by the Minister, and implementation of a plan for managing
12 the impacts of the approved action on a matter protected by a
13 provision of Part 3 for which the approval has effect or of a
14 plan for conserving habitat of a species or ecological
15 community; and
- 16 (f) conditions requiring specified environmental monitoring or
17 testing to be carried out; and
- 18 (g) conditions requiring compliance with a specified industry
19 standard or code of practice.

20 This subsection does not limit the kinds of conditions that may be
21 attached to an approval.

22 *Considerations in deciding on condition*

- 23 (4) In deciding whether to attach a condition to an approval, the
24 Minister must consider:
- 25 (a) any relevant conditions that have been imposed under a law
26 of a State or self-governing Territory or another law of the
27 Commonwealth on the taking of the action; and
- 28 (b) the desirability of ensuring as far as practicable that the
29 condition is a cost-effective means for the Commonwealth
30 and the person taking the action to achieve the object of the
31 condition.

32 **135 Certain approvals and conditions must not give preference**

- 33 (1) This section deals with the approval:
-

- 1 (a) for the purposes of section 21 of a nuclear action:
2 (i) by a person for the purposes of trade or commerce
3 between Australia and another country or between 2
4 States; or
5 (ii) by a constitutional corporation; or
6 (b) for the purposes of section 25 of an action that is prescribed
7 for the purposes of subsection 25(1) and is taken:
8 (i) by a person for the purposes of trade or commerce
9 between Australia and another country or between 2
10 States; or
11 (ii) by a constitutional corporation.
12 (2) The Minister must not grant the approval, or attach a condition to
13 the approval, that has the effect of giving preference (within the
14 meaning of section 99 of the Constitution) to one State or part of a
15 State over another State or part of a State.

16 **Subdivision B—Considerations for approvals and conditions**

17 **136 General considerations**

18 *Mandatory considerations*

- 19 (1) In deciding whether or not to approve the taking of an action, and
20 what conditions to attach to an approval, the Minister must
21 consider the following, so far as they are not inconsistent with any
22 other requirement of this Subdivision:
23 (a) matters relevant to any matter protected by a provision of
24 Part 3 that the Minister has decided is a controlling provision
25 for the action;
26 (b) economic and social matters.

27 *Factors to be taken into account*

- 28 (2) In considering those matters, the Minister must take into account:
29 (a) the principles of ecologically sustainable development; and
30 (b) the assessment report relating to the action; and
-

Section 136

- 1 (c) if the action was assessed under Division 5 or 6 of Part 8
2 (which deal with public environment reports and
3 environmental impact statements)—the report or statement
4 about the action finalised by the designated proponent; and
5 (d) if an inquiry was conducted under Division 7 of Part 8 in
6 relation to the action—the report of the commissioners; and
7 (e) any other information the Minister has on the relevant
8 impacts of the action (including information in a report on
9 the impacts of actions taken under a policy, plan or program
10 under which the action is to be taken that was given to the
11 Minister under an agreement under Part 10 (about strategic
12 assessments)); and
13 (f) any relevant comments given to the Minister by another
14 Minister in accordance with an invitation under section 131.

15 *Principles of ecologically sustainable development*

- 16 (3) The *principles of ecologically sustainable development* consist of:
17 (a) the following core objectives:
18 (i) to enhance individual and community well-being and
19 welfare by following a path of economic development
20 that safeguards the welfare of future generations;
21 (ii) to provide for equity within and between generations;
22 (iii) to protect biological diversity and maintain essential
23 ecological processes and life-support systems; and
24 (b) the following guiding principles:
25 (i) decision-making processes should effectively integrate
26 both long-term and short-term economic,
27 environmental, social and equity considerations;
28 (ii) if there are threats of serious or irreversible
29 environmental damage, lack of full scientific certainty
30 should not be used as a reason for postponing measures
31 to prevent environmental degradation;
32 (iii) the global dimension of environmental impacts of
33 actions and policy should be recognised and considered;

Section 137

- 1 (iv) the need to develop a strong, growing and diversified
2 economy that can enhance the capacity for
3 environmental protection should be recognised;
4 (v) the need to maintain and enhance international
5 competitiveness in an environmentally sound manner
6 should be recognised;
7 (vi) cost-effective and flexible measures should be adopted;
8 (vii) decisions and actions should provide for broad
9 community involvement on issues which affect the
10 community.

11 Note: The principles of ecologically sustainable development that are set out
12 in this subsection are based on the core objectives and guiding
13 principles that were endorsed by the Council of Australian
14 Governments in December 1992.

15 *Person's environmental history*

- 16 (4) In deciding whether or not to approve the taking of an action by a
17 person, and what conditions to attach to an approval, the Minister
18 may consider whether the person is a suitable person to be granted
19 an approval, having regard to the person's history in relation to
20 environmental matters.

21 *Minister not to consider other matters*

- 22 (5) In deciding whether or not to approve the taking of an action, and
23 what conditions to attach to an approval, the Minister must not
24 consider any matters that the Minister is not required or permitted
25 by this Subdivision to consider.

26 **137 Requirements for decisions about World Heritage**

27 In deciding whether or not to approve for the purposes of section
28 12 the taking of an action, and what conditions to attach to such an
29 approval, the Minister must not act inconsistently with Australia's
30 obligations under the World Heritage Convention.

Section 138

1 **138 Requirements for decisions about Ramsar wetlands**

2 In deciding whether or not to approve for the purposes of section
3 16 the taking of an action, and what conditions to attach to such an
4 approval, the Minister must not act inconsistently with Australia's
5 obligations under the Ramsar Convention.

6 **139 Requirements for decisions about threatened species and**
7 **endangered communities**

8 In deciding whether or not to approve for the purposes of a
9 subsection of section 18 the taking of an action, and what
10 conditions to attach to such an approval, the Minister must not act
11 inconsistently with:

- 12 (a) Australia's obligations under:
13 (i) the Biodiversity Convention; or
14 (ii) the Apia Convention; or
15 (iii) CITES; or
16 (b) a recovery plan or threat abatement plan.

17 **140 Requirements for decisions about migratory species**

18 In deciding whether or not to approve for the purposes of section
19 20 the taking of an action relating to a listed migratory species, and
20 what conditions to attach to such an approval, the Minister must
21 not act inconsistently with Australia's obligations under whichever
22 of the following conventions and agreements because of which the
23 species is listed:

- 24 (a) the Bonn Convention;
25 (b) CAMBA;
26 (c) JAMBA;
27 (d) an international agreement approved under subsection
28 209(4).

1 **141 Requirements for decisions about prescribed actions**

2 In deciding whether or not to approve for the purposes of section
3 25 the taking of an action prescribed by the regulations for the
4 purposes of that section, the Minister must not act inconsistently
5 with Australia's obligations under any agreement between
6 Australia and one or more other countries that is relevant to actions
7 of that kind.

Section 142

1

2 **Division 2—Requirement to comply with conditions**

3 **142 Compliance with conditions on approval**

4 (1) A person whose taking of an action has been approved under this
5 Part must not contravene any condition attached to the approval.

6 Civil penalty:

7 (a) for an individual—1,000 penalty units, or such lower amount
8 as is prescribed by the regulations;

9 (b) for a body corporate—10,000 penalty units, or such lower
10 amount as is prescribed by the regulations.

11 (2) A contravention of a condition attached to an approval under this
12 Part does not invalidate the approval.

1
2 **Division 3—Variation of conditions and suspension and**
3 **revocation of approvals**

4 **143 Variation of conditions attached to approval**

- 5 (1) The Minister may, by written instrument, revoke, vary or add to
6 any conditions attached to an approval under this Part of an action
7 if:
8 (a) any condition attached to the approval has been contravened;
9 or
10 (b) both of the following conditions are satisfied:
11 (i) the action has had a significant impact that was not
12 identified in assessing the action on any matter
13 protected by a provision of Part 3 for which the
14 approval has effect, or the Minister believes the action
15 will have such an impact;
16 (ii) the Minister believes it is necessary to revoke, vary or
17 add a condition to protect the matter from the impact; or
18 (c) the person whose taking of the action was approved agrees to
19 the proposed revocation, variation or addition and the
20 Minister is satisfied that any conditions attached to the
21 approval after the proposed revocation, variation or addition
22 are necessary or convenient for:
23 (i) protecting a matter protected by any provision of Part 3
24 for which the approval has effect; or
25 (ii) repairing or mitigating damage to a matter protected by
26 a provision of Part 3 for which the approval has effect
27 (whether or not the damage has been, will be or is likely
28 to be caused by the action).
- 29 (2) The Minister may, by written instrument, revoke any condition
30 attached to an approval under this Part of an action if the Minister
31 is satisfied that the condition is not needed to protect any matter
32 protected by a provision of Part 3 for which the approval has
33 effect.

Section 144

- 1 (3) In deciding whether or not to revoke, vary or add to any conditions
2 attached to the approval of the taking of an action by a person, the
3 Minister may have regard to the person's history in relation to
4 environmental matters.
- 5 (4) The revocation, variation or addition takes effect on the day
6 specified in the instrument. The Minister must not specify a day
7 earlier than the day the instrument is made.
- 8 (5) As soon as possible after making the instrument, the Minister must:
9 (a) give a copy of it to the person to whose action the approval
10 relates; and
11 (b) publish the instrument in accordance with the regulations.
- 12 (6) However, the Minister must not publish so much of the instrument
13 as:
14 (a) is an exempt document under the *Freedom of Information*
15 *Act 1982* on the grounds of commercial confidence; or
16 (b) the Minister believes it is in the national interest not to
17 provide.
- 18 The Minister may consider the defence or security of the
19 Commonwealth when determining what is in the national interest.
20 This does not limit the matters the Minister may consider.

21 **144 Suspension of approval**

- 22 (1) The Minister may, by written instrument, suspend the effect of an
23 approval under this Part for the purposes of a specified provision of
24 Part 3 for a specified period (which must not start before the day
25 on which the instrument is made) if the Minister believes on
26 reasonable grounds that:
27 (a) a significant impact on the matter protected by the provision
28 has occurred because of the contravention of a condition
29 attached to the approval; or
30 (b) the conditions specified in subsection (2) are satisfied.
- 31 (2) The conditions are that:
-

- 1 (a) the action has had, or the Minister believes that the action
2 will have, a significant impact that was not identified in
3 assessing the action on a matter protected by a provision of
4 Part 3 for which the approval has effect; and
5 (b) the approval would not have been granted if information that
6 the Minister has about that impact had been available when
7 the decision to approve the action was made.
- 8 (3) In deciding whether or not to suspend an approval of the taking of
9 an action by a person, the Minister may have regard to the person's
10 history in relation to environmental matters.
- 11 (4) During the specified period, the specified provision of Part 3
12 applies as if the Minister had not given the approval.
- 13 (5) As soon as possible after making the instrument, the Minister must:
14 (a) give a copy of it to the person to whose action the approval
15 relates; and
16 (b) publish the instrument in accordance with the regulations.

17 **145 Revocation of approval**

- 18 (1) The Minister may, by written instrument, revoke an approval under
19 this Part for the purposes of a specified provision of Part 3 if:
20 (a) a significant impact on the matter protected by the provision
21 has occurred because of the contravention of a condition
22 attached to the approval; or
23 (b) the conditions specified in subsection (2) are satisfied.
- 24 (2) The conditions are that:
25 (a) the action has had, or the Minister believes that the action
26 will have, a significant impact that was not identified in
27 assessing the action on a matter protected by a provision of
28 Part 3 for which the approval has effect; and
29 (b) the approval would not have been granted if information that
30 the Minister has about that impact had been available when
31 the decision to approve the action was made.

Chapter 4 Environmental assessments and approvals

Part 9 Approval of actions

Division 3 Variation of conditions and suspension and revocation of approvals

Section 145

- 1 (3) In deciding whether or not to revoke an approval of the taking of
2 an action by a person, the Minister may have regard to the person's
3 history in relation to environmental matters.
- 4 (4) The revocation takes effect on the day specified in the instrument.
5 The Minister must not specify a day earlier than the day the
6 instrument is made.
- 7 (5) As soon as possible after making the instrument, the Minister must:
8 (a) give a copy of it to the person to whose action the approval
9 related; and
10 (b) publish the instrument in accordance with the regulations.

1

2 **Part 10—Strategic assessments**

3 **Division 1—Strategic assessments generally**

4 **146 Minister may agree on strategic assessment**

5 (1) The Minister may agree in writing with a person responsible for
6 the adoption or implementation of a policy, plan or program that an
7 assessment be made of the relevant impacts of actions under the
8 policy, plan or program that are controlled actions or would be
9 apart from Division 1 or 2 of Part 4.

10 (2) The agreement must provide for:

11 (a) the preparation of a draft of a report on those impacts; and

12 (b) the publication of the draft for public comment; and

13 (c) the finalisation of the report, taking into account the
14 comments (if any) received after publication of the draft; and

15 (d) the provision of the report to the Minister; and

16 (e) the making of recommendations by the Minister to the person
17 about the policy, plan or program (including
18 recommendations for modification of the policy, plan or
19 program); and

20 (f) the endorsement of the policy, plan or program by the
21 Minister if he or she is satisfied that:

22 (i) the report adequately addresses those impacts; and

23 (ii) either the recommended modifications of the policy,
24 plan or program (if any) have been made or any
25 modifications having the same effect have been made;
26 and

27 (g) any other matter prescribed by the regulations.

28 Note 1: If the relevant impacts of actions under a policy, plan or program are
29 assessed under an agreement under this Part, the Minister may decide
30 on a less onerous approach for an assessment relating to an individual
31 action under the policy, plan or program. See section 87.

Chapter 4 Environmental assessments and approvals

Part 10 Strategic assessments

Division 1 Strategic assessments generally

Section 146

1
2
3
4

Note 2: If the Minister endorses the policy, plan or program, he or she may declare under section 33 that actions taken under the policy, plan or program do not need approval for the purposes of specified provisions of Part 3.

1

2 **Division 2—Assessment of Commonwealth-managed**
3 **fisheries**

4 **147 Simplified outline of this Division**

5 The following is a simplified outline of this Division:

6 The Australian Fisheries Management Authority must make
7 agreements under Division 1 for the assessment of actions in
8 fisheries managed under the *Fisheries Management Act 1991*. An
9 agreement must be made whenever it is proposed to make a
10 management plan or a determination not to have a plan. An
11 agreement must be made within 5 years of the commencement of
12 this Act for all fisheries that did not have plans at that
13 commencement.

14 The Minister administering the *Torres Strait Fisheries Act 1984*
15 must make agreements under Division 1 for the assessment of
16 actions permitted by policies or plans for managing fishing in
17 Torres Strait. All policies or plans must be covered by an
18 agreement within 5 years after the commencement of this Act.

19 A further agreement for assessment must be made if the impact of
20 the actions is significantly greater than assessed under an earlier
21 agreement.

22 If the Minister endorses a policy or plan assessed under an
23 agreement under Division 1, the Minister must make a declaration
24 that actions under the policy or plan do not need approval under
25 Part 9 for the purposes of section 23 (which protects the marine
26 environment).

Section 148

1 **148 Assessment before management plan is determined**

2 *Plans under the Fisheries Management Act 1991*

- 3 (1) Before the Australian Fisheries Management Authority determines
4 a plan of management for a fishery under section 17 of the
5 *Fisheries Management Act 1991*, the Authority must:
6 (a) make an agreement with the Minister under section 146 for
7 assessment of the relevant impacts of actions under the plan;
8 and
9 (b) consider any recommendations made by the Minister under
10 the agreement.

11 *Plans under the Torres Strait Fisheries Act 1984*

- 12 (2) Before the Minister administering the *Torres Strait Fisheries Act*
13 *1984* determines a plan of management for a fishery under section
14 15A of that Act, he or she must:
15 (a) make an agreement under section 146 with the Minister (the
16 ***Environment Minister***) administering this section for
17 assessment of the relevant impacts of actions under the plan;
18 and
19 (b) consider any recommendations made by the Environment
20 Minister under the agreement.

21 **149 Assessment before determination that no plan required**

22 Before the Australian Fisheries Management Authority determines
23 under subsection 17(1A) of the *Fisheries Management Act 1991*
24 that a plan of management is not warranted for a fishery, the
25 Authority must:

- 26 (a) make an agreement with the Minister under section 146 for
27 assessment of the relevant impacts of actions permitted under
28 the Authority's policy for managing the fishery; and
29 (b) consider any recommendations made by the Minister under
30 the agreement.

1 **150 Assessment of all fisheries without plans must be started within**
2 **5 years**

3 *Fisheries managed under the Fisheries Management Act 1991*

- 4 (1) This section applies to fisheries (as defined in the *Fisheries*
5 *Management Act 1991*):
6 (a) that are managed under that Act (whether as a result of
7 arrangements under section 71 or 72 of that Act or not); and
8 (b) for which there were not plans of management in force under
9 that Act when this Act commenced.

10 *Two-thirds of fisheries to be covered by agreements in 3 years*

- 11 (2) Before the day that is the third anniversary of this Act
12 commencing, the Australian Fisheries Management Authority must
13 make agreements with the Minister under section 146 for
14 assessment of the relevant impacts of actions permitted under the
15 Authority's policies for managing at least $\frac{2}{3}$ of the fisheries.

16 *All fisheries to be covered by agreements in 5 years*

- 17 (3) Before the day that is the fifth anniversary of this Act commencing,
18 the Australian Fisheries Management Authority must make
19 agreements with the Minister under section 146 for assessment of
20 the relevant impacts of actions permitted under the Authority's
21 policies for managing the fisheries.

22 *Agreement not needed if fishery already subject to agreement*

- 23 (4) However, subsection (3) does not require another agreement to be
24 made in relation to a fishery if an agreement relating to the fishery
25 has been made, before the day mentioned in that subsection, by the
26 Authority and the Minister under section 146 because of subsection
27 148(1) or section 149.

Section 151

1 **151 Assessment of all Torres Strait fisheries to be started within 5**
2 **years**

3 *Fisheries managed under the Torres Strait Fisheries Act 1984*

- 4 (1) This section applies to actions that:
5 (a) are involved in fishing (as defined in the *Torres Strait*
6 *Fisheries Act 1984*) in an area of Australian jurisdiction (as
7 defined in that Act); and
8 (b) were not covered by a plan of management in force under
9 section 15A of that Act when this Act commenced.

10 *Policies for all actions to be covered by agreements in 5 years*

- 11 (2) Before the day that is the fifth anniversary of this Act commencing,
12 the Minister administering the *Torres Strait Fisheries Act 1984*
13 must make agreements under section 146 with the Minister
14 administering this section for assessment of the relevant impacts of
15 the actions permitted by policies under that Act.

16 *Agreement not needed if fishery already subject to agreement*

- 17 (3) However, subsection (2) does not require another agreement to be
18 made in relation to actions if an agreement covering them has been
19 made under section 146, before the day mentioned in that
20 subsection, by the Ministers mentioned in that subsection because
21 of subsection 148(1).

22 **152 Further assessment if impacts greater than previously assessed**

23 *Application*

- 24 (1) This section applies if the Minister (the *Environment Minister*)
25 and the Minister administering the *Fisheries Management Act 1991*
26 agree that the impacts that actions:
27 (a) included in a fishery managed under that Act; or

1 (b) permitted under a policy or plan for managing fishing (as
2 defined in the *Torres Strait Fisheries Act 1984*) in an area of
3 Australian jurisdiction (as defined in that Act);
4 have, will have or are likely to have on a matter protected by a
5 provision of Part 3 are significantly greater than the impacts
6 identified in the most recent report provided to the Environment
7 Minister under an agreement made under section 146 relating to
8 the fishery, policy or plan.

9 *Further assessment for management arrangements under the*
10 *Fisheries Management Act 1991*

11 (2) The Australian Fisheries Management Authority must make
12 another agreement with the Minister under section 146 in relation
13 to the Authority's policy for managing the fishery, unless there is a
14 plan of management in force for the fishery under the *Fisheries*
15 *Management Act 1991*.

16 *Further assessment for policy or plan for Torres Strait fishing*

17 (3) The Minister administering the *Torres Strait Fisheries Act 1984*
18 must make another agreement under section 146 in relation to the
19 policy or plan for managing fishing (as defined in the *Torres Strait*
20 *Fisheries Act 1984*) in an area of Australian jurisdiction (as defined
21 in that Act).

22 **153 Minister must make declaration if he or she endorses plan or**
23 **policy**

24 (1) This section applies if the Minister makes an agreement under
25 section 146 as required by this Division and endorses under the
26 agreement:
27 (a) a plan of management under the *Fisheries Management Act*
28 *1991* for a fishery; or
29 (b) policies of the Australian Fisheries Management Authority
30 for managing a fishery for which there is not a plan of
31 management under the *Fisheries Management Act 1991*; or

Chapter 4 Environmental assessments and approvals

Part 10 Strategic assessments

Division 2 Assessment of Commonwealth-managed fisheries

Section 154

1 (c) a plan of management under the *Torres Strait Fisheries Act*
2 *1984* for a fishery; or

3 (d) policies for managing fishing under the *Torres Strait*
4 *Fisheries Act 1984*.

5 (2) The Minister must make a declaration under section 33 that actions
6 approved under the endorsed plan or policies do not require
7 approval under Part 9 for the purposes of subsection 23(1), (2) or
8 (3).

9 Note: The declaration will allow actions that would otherwise be prohibited
10 by section 23 to be taken without approval. See section 32.

11 **154 This Division does not limit Division 1**

12 This Division does not limit Division 1.

1

2 **Part 11—Miscellaneous rules about assessments**
3 **and approvals**

4 **Division 1—Rules about timing**

5 **155 This Chapter ceases to apply to lapsed proposals**

6 (1) If:

7 (a) a person who proposes to take a controlled action or is the
8 designated proponent of an action is required or requested
9 under this Chapter to do something; and

10 (b) the person does not do the thing within a period that the
11 Minister believes is a reasonable period;
12 the Minister may give the person a written notice inviting the
13 person to satisfy the Minister within a specified reasonable period
14 that assessment of the action should continue or that the Minister
15 should make a decision about approving the action.

16 Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* explain how
17 documents may be served and when they are taken to be served.

18 (2) If, by the end of the specified period, the person fails to satisfy the
19 Minister that assessment of the action should continue or that the
20 Minister should make a decision about approving the action, the
21 Minister may declare in writing that this Chapter no longer applies
22 to the action.

23 (3) This Chapter (apart from this section) ceases to apply in relation to
24 the action on the date specified in the declaration. The Minister
25 must not specify a date earlier than the date of making of the
26 declaration.

27 (4) The Minister must:

28 (a) give a copy of the declaration to the person and to the
29 Secretary; and

30 (b) publish the declaration in accordance with the regulations.

Section 156

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

156 General rules about time limits

- (1) If this Chapter specifies a time limit in business days in relation to a controlled action (or an action that the Minister believes may be or is a controlled action), the limit is to be worked out by reference to what is a business day in the place where the action is to be taken.
- (2) A day is not to be counted as a business day for the purposes of subsection (1) if it is not a business day in all the places in which the action is to be taken.
- (3) Failure to comply with a time limit set in this Chapter does not affect the validity of:
 - (a) a decision under this Chapter; or
 - (b) an assessment or approval under this Chapter.

Note: The Minister must make a statement to Parliament about some failures to comply with time limits. See section 518.

1

2 **Division 2—Actions in area offshore from a State or the**
3 **Northern Territory**

3

4 **157 Actions treated as though they were in a State or the Northern**
5 **Territory**

4

5

6

7

8

9

10

(1) A provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a State also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the State by section 4 of the *Coastal Waters (State Title) Act 1980*.

11

12

13

14

15

16

(2) So far as a provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a self-governing Territory relates to the Northern Territory, the provision also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*.

Section 158

1

2 **Division 3—Exemptions**

3 **158 Exemptions from Part 3 and this Chapter**

- 4 (1) A person proposing to take a controlled action, or the designated
5 proponent of an action, may apply in writing to the Minister for an
6 exemption from a specified provision of Part 3 or of this Chapter.
- 7 (2) The Minister must decide within 20 business days of receiving the
8 application whether or not to grant the exemption.
- 9 (3) The Minister may, by written notice, exempt a specified person
10 from the application of a specified provision of Part 3 or of this
11 Chapter in relation to a specified action.
- 12 (4) The Minister may do so only if he or she is satisfied that it is in the
13 national interest that the provision not apply in relation to the
14 person or the action.
- 15 (5) In determining the national interest, the Minister may consider
16 Australia's defence or security or a national emergency. This does
17 not limit the matters the Minister may consider.
- 18 (6) A provision specified in the notice does not apply in relation to the
19 specified person or action on or after the day specified in the
20 notice. The Minister must not specify a day earlier than the day the
21 notice is made.
- 22 (7) Within 10 business days after making the notice, the Minister
23 must:
- 24 (a) publish a copy of the notice and his or her reasons for
25 granting the exemption in accordance with the regulations;
26 and
27 (b) give a copy of the notice to the person specified in the notice.

1

2 **Division 4—Application of Chapter to actions that are not**
3 **controlled actions**

3

4 **Subdivision A—Minister’s advice on authorising actions**

4

5 **159 Simplified outline of this Subdivision**

5

6 The following is a simplified outline of this Subdivision:

6

7

A Commonwealth agency or employee must consider advice from the Minister before authorising one of the following actions with a significant impact on the environment:

8

9

10

(a) providing foreign aid;

11

(b) managing aircraft operations in airspace;

12

(c) adopting or implementing a major development plan for an airport;

13

14

(d) an action prescribed by the regulations.

15

The agency or employee must inform the Minister of the proposal to authorise the action.

16

17

The environmental impacts of the action must be assessed in accordance with a declaration made by the Minister accrediting a Commonwealth assessment process, or by one of the following methods chosen by the Minister:

18

19

20

21

(a) a specially accredited process;

22

(b) an assessment on preliminary documentation under Division 4 of Part 8;

23

Section 160

1
2
3
4
5
6
7
8

- (c) a public environment report under Division 5 of Part 8;
 - (d) an environmental impact statement under Division 6 of Part 8;
 - (e) an inquiry under Division 7 of Part 8.
- The Minister must give the agency or employee advice on protecting the environment from the action, within 30 days of receiving the report of the assessment.

9

160 Requirement to take account of Minister's advice

10
11
12
13
14
15

Requirement

- (1) Before a Commonwealth agency or employee of the Commonwealth gives an authorisation (however described) of an action described in subsection (2), the agency or employee must obtain and consider advice from the Minister in accordance with this Subdivision.

16

Relevant actions

17
18
19
20
21
22
23
24
25
26
27
28
29

- (2) Subsection (1) applies in relation to:
- (a) the provision of funding by the Commonwealth under Australia's foreign aid program for a project that has, will have or is likely to have a significant impact on the environment anywhere in the world; and
 - (b) the adoption or implementation of a plan for aviation airspace management involving aircraft operations that have, will have or are likely to have a significant impact on the environment; and
 - (c) the adoption or implementation of a major development plan (as defined in the *Airports Act 1996*); and
 - (d) any other action prescribed by the regulations for the purposes of this paragraph.
-

1 *This section does not apply to actions like those already assessed*

2 (3) Subsection (1) does not apply in relation to a particular
3 authorisation (the *later authorisation*) if the agency or employee
4 has complied with, or is complying with, this Subdivision in
5 relation to another authorisation or proposed authorisation and is
6 satisfied of one or both of the matters in subsection (5).

7 *Which actions are like actions?*

8 (4) For the purposes of subsection (3), the agency or employee must be
9 satisfied that:
10 (a) the Minister's advice relating to the other authorisation deals
11 or will deal with all the impacts that the action to which the
12 later authorisation relates has, will have or is likely to have
13 on the environment; or
14 (b) the impacts that the action to which the later authorisation
15 relates has, will have or is likely to have on the environment:
16 (i) are an extension of the corresponding impacts of the
17 action to which the other authorisation relates; and
18 (ii) are not significantly different in nature from those
19 corresponding impacts; and
20 (iii) do not significantly add to those corresponding impacts.

21 *State law excluded in relation to aviation*

22 (5) A law of a State or Territory does not apply in relation to the
23 assessment of the certain or likely environmental impacts of an
24 action described in paragraph (2)(b) if subsection (1) applies in
25 relation to authorisation of the action, or would apply apart from
26 subsection (3).

27 **161 Seeking the Minister's advice**

28 *Requirement for referral*

29 (1) If a Commonwealth agency or employee of the Commonwealth
30 proposing to give an authorisation (however described) of an

Chapter 4 Environmental assessments and approvals

Part 11 Miscellaneous rules about assessments and approvals

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

Section 162

1 action thinks the agency or employee is required by section 160 to
2 obtain and consider the Minister's advice before giving the
3 authorisation, the agency or employee must:

- 4 (a) refer the proposal to the Minister; and
5 (b) nominate a person to act as designated proponent of the
6 action.

7 *Minister may request referral*

8 (2) The Minister may request a Commonwealth agency or employee of
9 the Commonwealth to:

- 10 (a) refer to the Minister a proposal to give an authorisation
11 (however described) of an action; and
12 (b) nominate a person to act as designated proponent of the
13 action;

14 if the Minister thinks the agency or employee is required by section
15 160 to obtain and consider the Minister's advice before giving the
16 authorisation.

17 *Complying with Minister's request*

18 (3) The Commonwealth agency or employee must comply with the
19 Minister's request.

20 *Content of referral*

21 (4) A referral must include the information prescribed by the
22 regulations.

23 **162 Assessment of the action**

24 Part 8 (except sections 82 and 83) and the other provisions of this
25 Act (so far as they relate to that Part) apply in relation to the action
26 proposed to be authorised as if:

- 27 (a) the referral of the proposal to give the authorisation were a
28 referral of a proposal to take the action; and

- 1 (b) the Minister had decided under Division 2 of Part 7 that the
2 action was a controlled action; and
- 3 (c) the person nominated to act as the designated proponent had
4 been designated as the proponent of the action by the
5 Minister under section 75; and
- 6 (d) a reference in that Part or those provisions to the relevant
7 impacts of the action were a reference to the impact that the
8 action has, will have or is likely to have on the environment;
9 and
- 10 (e) a reference in that Part or those provisions to making an
11 informed decision on approving under Part 9 (for the
12 purposes of each controlling provision) the taking of the
13 action were a reference to giving informed advice about the
14 proposal to give an authorisation of the action.

15 **163 Providing advice**

- 16 (1) The Minister must give advice on the following matters to the
17 Commonwealth agency or employee of the Commonwealth who
18 referred the proposal to give an authorisation of the action:
- 19 (a) whether the agency or employee should give the
20 authorisation;
- 21 (b) what conditions (if any) should be attached to the
22 authorisation (if possible) to protect the environment;
- 23 (c) any other matter relating to protection of the environment
24 from the action.
- 25 (2) The Minister must give the advice within 30 days of receiving:
- 26 (a) a report mentioned in subsection 84(3) or section 95, 100 or
27 105 (as applied by section 162); or
- 28 (b) a report of an inquiry under Division 7 of Part 8 (as applied
29 by section 162) relating to the action.

Section 164

1 **164 Reporting on response to advice**

2 As soon as practicable after considering the Minister's advice, the
3 Commonwealth agency or employee of the Commonwealth must
4 give the Minister a report stating:

- 5 (a) what action has been taken in relation to the Minister's
6 advice; and
7 (b) if the agency or employee did not give effect to some or all
8 of the Minister's advice—why the agency or employee did
9 not do so.

10 **Subdivision B—Assessment of applications for permits relating**
11 **to whales, dolphins and porpoises**

12 **165 Assessment of applications for permits relating to whales,**
13 **dolphins and porpoises**

14 *Request for referral*

- 15 (1) The Minister may request a person applying for a permit under
16 Division 3 of Part 13 (about whales and other cetaceans) to refer to
17 the Minister the proposal to take the action that is to be covered by
18 the permit.

19 *Person must comply with request*

- 20 (2) The person must refer the proposal in accordance with Division 1
21 of Part 7 within 15 business days of the request.

22 *Assessment of proposed action for which permit is sought*

- 23 (3) The following provisions (the *applied provisions*) apply in the
24 manner specified in subsection (4) in relation to the proposal to
25 take the action:
26 (a) section 74;
27 (b) Division 2 of Part 7;
28 (c) Part 8;

- 1 (d) the other provisions of this Act, so far as they relate to the
2 provisions mentioned in paragraphs (a), (b) and (c).

3 *How the applied provisions apply to the proposed action*

- 4 (4) The applied provisions apply in relation to the proposal to take the
5 action as if:
6 (a) a reference in the applied provisions to a controlled action
7 were a reference to an action prohibited by Division 3 of Part
8 13 without a permit under that Division; and
9 (b) a reference in the applied provisions to a controlling
10 provision for the action were a reference to the provision of
11 Division 3 of Part 13 that prohibits the taking of the action
12 without a permit; and
13 (c) a reference in the applied provisions to an approval under
14 Part 9 of the taking of an action were a reference to the grant
15 of a permit under Division 3 of Part 13 to allow the action to
16 be taken; and
17 (d) a reference in the applied provisions to the relevant impacts
18 of an action were a reference to the impacts that the action:
19 (i) has or will have; or
20 (ii) is likely to have;
21 on a cetacean.

22 *Assessment report must be considered in decision on permit*

- 23 (5) The Minister must consider the assessment report relating to the
24 action when deciding whether to grant the permit for the action.

25 **Subdivision C—Assessment under agreement with State or**
26 **Territory**

27 **166 This Subdivision applies if Ministers agree it should**

- 28 (1) This Subdivision applies if the Minister and a Minister of a State or
29 self-governing Territory agree that it should apply in relation to an
30 action that:
-

Section 167

- 1 (a) is to be taken in the State or Territory by a constitutional
2 corporation; or
- 3 (b) if the agreement is with a Minister of a Territory—is to be
4 taken in the Territory; or
- 5 (c) is to be taken in the State or Territory by a person for the
6 purposes of trade or commerce:
- 7 (i) between Australia and another country; or
- 8 (ii) between 2 States; or
- 9 (iii) between a State and a Territory; or
- 10 (iv) between 2 Territories; or
- 11 (d) is to be taken in the State or Territory and is an action whose
12 assessment under this Subdivision is an appropriate means of
13 giving effect to Australia's obligations under an agreement
14 with one or more other countries.
- 15 (2) This section applies to the adoption or implementation of a policy,
16 plan or program in the same way as it applies to any other action.
- 17 (3) Despite subsection (1), this Subdivision does not apply in relation
18 to an action to be taken in 2 or more States or self-governing
19 Territories unless there is an agreement between the Minister and a
20 Minister of each of those States and Territories that this
21 Subdivision should apply in relation to the action.

22 **167 Making an agreement**

23 *Power to make agreement*

- 24 (1) The Minister may make a written agreement with a Minister of a
25 State or self-governing Territory to apply this Subdivision in
26 relation to an action to be taken in the State or Territory.

27 *Prerequisites for making agreement*

- 28 (2) The Minister may agree only if he or she is satisfied that the action
29 is not a controlled action.

1 *Minister must not make an agreement that gives preference*

- 2 (3) The Environment Minister must not enter into an agreement that
3 has the effect of giving preference (within the meaning of section
4 99 of the Constitution) to one State or part of a State over another
5 State or part of a State, in relation to the taking of the action:
6 (a) by a constitutional corporation; or
7 (b) by a person for the purposes of trade or commerce between
8 Australia and another country or between 2 States.

9 **168 Content of an agreement**

10 *Generally*

- 11 (1) An agreement to apply this Subdivision in relation to an action
12 must:
13 (a) either specify that one of Divisions 4, 5, 6 and 7 of Part 8 is
14 to apply in relation to the action or specify that Division 1 of
15 Part 10 is to apply in relation to the action; and
16 (b) if it specifies that one of Divisions 4, 5 and 6 of Part 8 is to
17 apply—specify the person who is taken to be the designated
18 proponent of the action for the purposes of that Division.

19 *Agreement applying Division 4 of Part 8*

- 20 (2) An agreement that specifies that Division 4 of Part 8 (about
21 assessment on preliminary documentation) is to apply in relation to
22 an action may deal with how the Minister will exercise his or her
23 power:
24 (a) under section 93 to give a direction to publish information
25 and specify the period for comment; or
26 (b) under section 94 to refuse to accept a document.

27 *Agreement applying Division 5 of Part 8*

- 28 (3) An agreement that specifies that Division 5 of Part 8 (about public
29 environment reports) is to apply in relation to an action may deal
30 with how the Minister will exercise his or her power:
-

Chapter 4 Environmental assessments and approvals

Part 11 Miscellaneous rules about assessments and approvals

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

Section 168

- 1 (a) under section 97 to prepare guidelines for the content of a
2 draft report; or
3 (b) under section 98 to approve publication of a draft report or
4 specify a period for comment; or
5 (c) under section 99 to refuse a finalised report.

6 *Agreement applying Division 6 of Part 8*

- 7 (4) An agreement that specifies that Division 6 of Part 8 (about
8 environmental impact statements) is to apply in relation to an
9 action may deal with how the Minister will exercise his or her
10 power:
11 (a) under section 102 to prepare guidelines for the content of a
12 draft statement; or
13 (b) under section 103 to approve publication of a draft statement
14 or specify a period for comment; or
15 (c) under section 104 to refuse a finalised statement.

16 *Agreement applying Division 7 of Part 8*

- 17 (5) An agreement that specifies that Division 7 of Part 8 (about
18 inquiries) is to apply in relation to an action may deal with how the
19 Minister will exercise his or her power under section 107:
20 (a) to appoint one or more persons as commissioners, and to
21 appoint a person to preside; or
22 (b) to specify the matters relating to the action that are to be the
23 subject of the inquiry and report; or
24 (c) to specify the time within which the commission must report
25 to the Minister; or
26 (d) to specify the manner in which the commission is to carry out
27 the inquiry.

28 *Agreement applying Part 10*

- 29 (6) An agreement that specifies that Division 1 of Part 10 is to apply
30 may:

- 1 (a) be in the same document as an agreement mentioned in that
2 Division; or
3 (b) specify the manner in which an agreement the Minister
4 makes under that Division is to provide for matters that that
5 Division requires that agreement to provide for.

6 **169 Application of a Division of Part 8**

7 *Provisions that apply*

- 8 (1) If the agreement states that a particular Division of Part 8 is to
9 apply in relation to the assessment of an action, the following
10 provisions of this Act (the *applied provisions*) apply in relation to
11 the action as set out in subsection (2):
12 (a) that Division;
13 (b) the other provisions of this Act (except Part 9), so far as they
14 relate to that Division.

15 *Modification of applied provisions*

- 16 (2) The applied provisions apply in relation to the action as if:
17 (a) the Minister had decided under Division 2 of Part 7 that the
18 action was a controlled action; and
19 (b) the Minister had decided that the relevant impacts of the
20 action must be assessed under the Division specified in the
21 agreement applying the Division; and
22 (c) the person specified in the agreement as the person who is
23 taken to be the designated proponent of the action for the
24 purposes of that Division had been designated as the
25 proponent of the action by the Minister under section 75; and
26 (d) a reference in the applied provisions to the relevant impacts
27 of the action were a reference to the impact that the action
28 has, will have or is likely to have on the environment; and
29 (e) a reference in the applied provisions to making an informed
30 decision on approving under Part 9 (for the purposes of each
31 controlling provision) the taking of the action were a

Chapter 4 Environmental assessments and approvals

Part 11 Miscellaneous rules about assessments and approvals

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

Section 170

1 reference to making an informed report and
2 recommendations relating to the action.

3 *Modification of section 93*

4 (3) Also, if the agreement states that Division 4 of Part 8 is to apply in
5 relation to the assessment of an action, that Division applies in
6 relation to the action as if subparagraphs 93(1)(a)(i), (ii) and (iii)
7 merely referred to specified information relating to the action.

8 *Minister must give copy of report to State or Territory Minister*

9 (4) The Minister must give a copy of the report he or she receives from
10 the Secretary or commission of inquiry under the applied
11 provisions in relation to the action to each Minister of a State or
12 Territory who is party to the agreement.

13 **170 Application of Division 1 of Part 10**

14 If an agreement to apply this Subdivision states that Division 1 of
15 Part 10 is to apply:

16 (a) that Division applies as if:

17 (i) the reference in subsection 146(1) to relevant impacts of
18 actions were a reference to the impacts the actions have,
19 will have or are likely to have on the environment; and

20 (ii) paragraph 146(2)(f) were omitted; and

21 (b) the Minister must give a copy of the report provided to the
22 Minister under the agreement made under section 146, and of
23 any recommendations made by the Minister under the
24 agreement, to each Minister of a State or Territory who is
25 party to the agreement to apply this Subdivision.

1
2 **Chapter 5—Conservation of biodiversity**

3 **Part 12—Identifying and monitoring biodiversity**
4 **and making bioregional plans**

5 **Division 1—Identifying and monitoring biodiversity**

6 **171 Identifying and monitoring biodiversity**

7 (1) The Minister may, on behalf of the Commonwealth, co-operate
8 with, and give financial or other assistance to, any person for the
9 purpose of identifying and monitoring components of biodiversity.

10 (2) Without limiting subsection (1), the co-operation and assistance
11 may include co-operation and assistance in relation to all or any of
12 the following:

- 13 (a) identifying and monitoring components of biodiversity that
14 are important for its conservation and ecologically
15 sustainable use;
- 16 (b) identifying components of biodiversity that are inadequately
17 understood;
- 18 (c) collecting and analysing information about the conservation
19 status of components of biodiversity;
- 20 (d) collecting and analysing information about processes or
21 activities that are likely to have a significant impact on the
22 conservation and ecologically sustainable use of biodiversity;
- 23 (e) assessing strategies and techniques for the conservation and
24 ecologically sustainable use of biodiversity;
- 25 (f) systematically determining biodiversity conservation needs
26 and priorities.

27 (3) In this Act:

28 *components of biodiversity* includes species, habitats, ecological
29 communities, genes, ecosystems and ecological processes.

Section 172

- 1 (4) For the purposes of this section, the components of biological
2 diversity that are important for its conservation and ecologically
3 sustainable use are to be identified having regard to the matters set
4 out in Annex I to the Biodiversity Convention.
- 5 (5) The giving of assistance may be made subject to such conditions as
6 the Minister thinks fit.

7 **172 Inventories of listed threatened species etc. on Commonwealth**
8 **land**

- 9 (1) The Minister must prepare inventories that identify, and state the
10 abundance of, the listed threatened species, listed threatened
11 ecological communities, listed migratory species and listed marine
12 species on Commonwealth land.
- 13 (2) Commonwealth land must be covered by an inventory:
14 (a) within 5 years after the commencement of this Act; or
15 (b) within 5 years after the land became Commonwealth land;
16 whichever is later.
- 17 (3) A Commonwealth agency that has an interest in Commonwealth
18 land must provide all reasonable assistance in connection with the
19 preparation under this section of an inventory that is to cover the
20 land.

21 **173 Surveys of cetaceans, listed threatened species etc. in**
22 **Commonwealth marine areas**

- 23 (1) The Minister must prepare surveys that identify, and state the
24 extent of the range of:
25 (a) cetaceans present in Commonwealth marine areas; and
26 (b) the listed threatened species, listed threatened ecological
27 communities, listed migratory species and listed marine
28 species in Commonwealth marine areas.
- 29 (2) A Commonwealth marine area must be covered by a survey:
30 (a) within 10 years after the commencement of this Act; or
-

1 (b) within 10 years after the area became a Commonwealth
2 marine area;
3 whichever is later.

4 (3) A Commonwealth agency that has an interest in a Commonwealth
5 marine area is to provide all reasonable assistance in connection
6 with the preparation under this section of a survey that is to cover
7 the area.

8 **174 Inventories and surveys to be updated**

9 The Minister must take reasonable steps to ensure that the
10 inventories and surveys prepared under this Division are
11 maintained in an up-to-date form.

12 **175 Obligations under this Act unaffected by lack of inventories or**
13 **surveys**

14 Obligations imposed by this Act are not affected, in their
15 application in relation to Commonwealth land or Commonwealth
16 marine areas, by any lack of inventories or surveys for such land or
17 areas.

1

2 **Division 2—Bioregional plans**

3 **176 Bioregional plans**

4 (1) The Minister may prepare a bioregional plan for a bioregion that is
5 within a Commonwealth area.

6 (2) The Minister may, on behalf of the Commonwealth, co-operate
7 with a State or a self-governing Territory, an agency of a State or
8 of a self-governing Territory, or any other person in the preparation
9 of a bioregional plan for a bioregion that is not wholly within a
10 Commonwealth area.

11 (3) The co-operation may include giving financial or other assistance.

12 (4) A bioregional plan may include provisions about all or any of the
13 following:

14 (a) the components of biodiversity, their distribution and
15 conservation status;

16 (b) important economic and social values;

17 (c) objectives relating to biodiversity and other values;

18 (d) priorities, strategies and actions to achieve the objectives;

19 (e) mechanisms for community involvement in implementing the
20 plan;

21 (f) measures for monitoring and reviewing the plan.

22 (5) Subject to this Act, the Minister may have regard to a bioregional
23 plan in making any decision under this Act to which the plan is
24 relevant.

25 **177 Obligations under this Act unaffected by lack of bioregional
26 plans**

27 Obligations imposed by this Act are not affected, in their
28 application in relation to Commonwealth areas, by a lack of
29 bioregional plans for those areas.

1

2 **Part 13—Species and communities**

3 **Division 1—Listed threatened species and ecological**
4 **communities**

5 **Subdivision A—Listing**

6 **178 Listing of threatened species**

- 7 (1) The Minister must, by instrument published in the *Gazette*,
8 establish a list of threatened species divided into the following
9 categories:
- 10 (a) extinct;
 - 11 (b) extinct in the wild;
 - 12 (c) critically endangered;
 - 13 (d) endangered;
 - 14 (e) vulnerable;
 - 15 (f) conservation dependent.
- 16 (2) The list, as first established, must contain only the species
17 contained in Schedule 1 to the *Endangered Species Protection Act*
18 *1992*, as in force immediately before the commencement of this
19 Act.
- 20 (3) The Minister must include:
- 21 (a) in the extinct category of the list, as first established, only the
22 species mentioned in subsection (2) that were listed as
23 presumed extinct; and
 - 24 (b) in the endangered category of the list, as first established,
25 only the native species mentioned in subsection (2) that were
26 listed as endangered; and
 - 27 (c) in the vulnerable category of the list, as first established, only
28 the species mentioned in subsection (2) that were listed as
29 vulnerable.

Section 179

- 1 (4) If the Minister is satisfied that a species included in the list, as first
2 established, in:
3 (a) the extinct category; or
4 (b) the endangered category; or
5 (c) the vulnerable category;
6 is not eligible to be included in that or any other category, or is
7 eligible to be, or under subsection 186(3), (4) or (5) can be,
8 included in another category, the Minister must, within 6 months
9 after the commencement of this Act, amend the list accordingly in
10 accordance with this Subdivision.

11 **179 Categories of threatened species**

- 12 (1) A native species is eligible to be included in the *extinct* category at
13 a particular time if, at that time, there is no reasonable doubt that
14 the last member of the species has died.
- 15 (2) A native species is eligible to be included in the *extinct in the wild*
16 category at a particular time if, at that time:
17 (a) it is known only to survive in cultivation, in captivity or as a
18 naturalised population well outside its past range; or
19 (b) it has not been recorded in its known and/or expected habitat,
20 at appropriate seasons, anywhere in its past range, despite
21 exhaustive surveys over a time frame appropriate to its life
22 cycle and form.
- 23 (3) A native species is eligible to be included in the *critically*
24 *endangered* category at a particular time if, at that time, it is facing
25 an extremely high risk of extinction in the wild in the immediate
26 future, as determined in accordance with the prescribed criteria.
- 27 (4) A native species is eligible to be included in the *endangered*
28 category at a particular time if, at that time:
29 (a) it is not critically endangered; and
30 (b) it is facing a very high risk of extinction in the wild in the
31 near future, as determined in accordance with the prescribed
32 criteria.
-

- 1 (5) A native species is eligible to be included in the *vulnerable*
2 category at a particular time if, at that time:
3 (a) it is not critically endangered or endangered; and
4 (b) it is facing a high risk of extinction in the wild in the
5 medium-term future, as determined in accordance with the
6 prescribed criteria.
- 7 (6) A native species is eligible to be included in the *conservation*
8 *dependent* category at a particular time if, at that time, the species
9 is the focus of a specific conservation program, the cessation of
10 which would result in the species becoming vulnerable,
11 endangered or critically endangered within a period of 5 years.

12 **180 Native species of marine fish**

- 13 (1) A native species of marine fish is eligible to be included in a
14 category mentioned in a paragraph of subsection 178(1) at a
15 particular time if, at that time, the species meets the prescribed
16 criteria for that category.
- 17 (2) A subsection of section 179 referring to a category (the *relevant*
18 *category*) does not apply to a native species of marine fish if
19 regulations are in force for the purposes of subsection (1) of this
20 section prescribing criteria for the relevant category.

21 **181 Listing of threatened ecological communities**

- 22 (1) The Minister must, by instrument published in the *Gazette*,
23 establish a list of threatened ecological communities divided into
24 the following categories:
25 (a) critically endangered;
26 (b) endangered;
27 (c) vulnerable.
- 28 (2) Subject to subsection (3), the Minister must not include an
29 ecological community in a particular category of the list, as first
30 established, unless satisfied that the ecological community is

Section 182

- 1 eligible to be included in that category when the list is first
2 published.
- 3 (3) If one or more ecological communities are contained in Schedule 2
4 to the *Endangered Species Protection Act 1992*, as in force
5 immediately before the commencement of this Act, the list, as first
6 established, must contain only those communities, and they must
7 be included in the endangered category.
- 8 (4) If the Minister is satisfied that an ecological community included
9 in the endangered category of the list, as first established under
10 subsection (3), is not eligible to be included in that or any other
11 category, or is eligible to be included in another category, the
12 Minister must, within 6 months after the commencement of this
13 Act, amend the list accordingly in accordance with this
14 Subdivision.
- 15 (5) An instrument (other than an instrument establishing the list
16 mentioned in subsection (3)) is a disallowable instrument for the
17 purposes of section 46A of the *Acts Interpretation Act 1901*.

18 **182 Critically endangered, endangered and vulnerable communities**

- 19 (1) An ecological community is eligible to be included in the ***critically***
20 ***endangered*** category at a particular time if, at that time, it is facing
21 an extremely high risk of extinction in the wild in the immediate
22 future, as determined in accordance with the prescribed criteria.
- 23 (2) An ecological community is eligible to be included in the
24 ***endangered*** category at a particular time if, at that time:
25 (a) it is not critically endangered; and
26 (b) it is facing a very high risk of extinction in the wild in the
27 near future, as determined in accordance with the prescribed
28 criteria.
- 29 (3) An ecological community is eligible to be included in the
30 ***vulnerable*** category at a particular time if, at that time:
31 (a) it is not critically endangered nor endangered; and

- 1 (b) it is facing a high risk of extinction in the wild in the
2 medium-term future, as determined in accordance with the
3 prescribed criteria.

4 **183 Listing of key threatening processes**

- 5 (1) The Minister must, by instrument published in the *Gazette*,
6 establish a list of threatening processes that are key threatening
7 processes.
- 8 (2) The list, as first established, must contain only the key threatening
9 processes contained in Schedule 3 to the *Endangered Species*
10 *Protection Act 1992*, as in force immediately before the
11 commencement of this Act.

12 **184 Minister may amend lists**

- 13 (1) Subject to this Subdivision, the Minister may, by instrument
14 published in the *Gazette*, amend a list referred to in section 178,
15 181 or 183 by:
- 16 (a) including items in the list; or
17 (b) deleting items from the list; or
18 (c) in the case of the list referred to in section 178 or 181—
19 transferring items from one category in the list to another
20 category in the list; or
21 (d) correcting an inaccuracy or updating the name of a listed
22 threatened species or listed threatened ecological community.
- 23 (2) An instrument (other than an instrument mentioned in paragraph
24 (1)(d)) is a disallowable instrument for the purposes of section 46A
25 of the *Acts Interpretation Act 1901*.
- 26 (3) Despite section 48 of the *Acts Interpretation Act 1901* as it applies
27 in relation to an instrument because of section 46A of that Act,
28 amendments of the kind mentioned in paragraphs (1)(b) and (c)
29 take effect on the first day on which they are no longer liable to be
30 disallowed, or to be taken to have been disallowed, under section
31 48 of that Act as it so applies.
-

Section 185

- 1 (4) When an instrument is laid before each House of the Parliament in
2 accordance with section 48 of the *Acts Interpretation Act 1901*, the
3 Minister must cause a statement to be laid before each House with
4 the instrument explaining:
- 5 (a) in the case of an item that has been included in a list by the
6 instrument—why the item was so included; or
7 (b) in the case of an item that has been deleted from a list by the
8 instrument—why the item was so deleted; or
9 (c) in the case of an item that has been transferred by the
10 instrument from one category in the list referred to in section
11 178 or 181 to another category in that list—why the item has
12 been so transferred.
- 13 (5) The Minister must cause a notice summarising the information
14 contained in an instrument to be published in accordance with the
15 regulations (if any).

16 **185 Maintaining the lists in up-to-date condition**

17 The Minister must take all reasonably practical steps to amend as
18 necessary:

- 19 (a) the list referred to in section 178 so that it contains in each
20 category all native species that are eligible to be, or under
21 subsection 186(3), (4) or (5) can be, included in that
22 category; and
23 (b) the list referred to in section 181 so that it contains in each
24 category all ecological communities that are eligible to be
25 included in that category.

26 **186 Amending list of threatened native species**

- 27 (1) Subject to subsections (3), (4) and (5), the Minister must not:
28 (a) include (whether as a result of a transfer or otherwise) a
29 native species in a particular category; or
30 (b) delete (whether as a result of a transfer or otherwise) a native
31 species from a particular category;

- 1 unless satisfied that the native species is eligible, or is no longer
2 eligible, as the case requires, to be included in that category.
- 3 (2) In deciding whether to include a native species in, or delete a
4 native species from, a particular category (whether as a result of a
5 transfer or otherwise), the Minister must not consider any matter
6 that does not relate to the survival of the native species concerned.
- 7 (3) The Minister may include a native species in the critically
8 endangered category if satisfied that:
- 9 (a) it so closely resembles in appearance, at any stage of its
10 biological development, a species that is eligible to be
11 included in that category (see subsection 179(3)) that it is
12 difficult to differentiate between the 2 species; and
- 13 (b) this difficulty poses an additional threat to the last-mentioned
14 species; and
- 15 (c) it would substantially promote the objects of this Act if the
16 first-mentioned species were regarded as critically
17 endangered.
- 18 (4) The Minister may include a native species in the endangered
19 category if satisfied that:
- 20 (a) it so closely resembles in appearance, at any stage of its
21 biological development, a species that is eligible to be
22 included in that category (see subsection 179(4)) that it is
23 difficult to differentiate between the 2 species; and
- 24 (b) this difficulty poses an additional threat to the last-mentioned
25 species; and
- 26 (c) it would substantially promote the objects of this Act if the
27 first-mentioned species were regarded as endangered.
- 28 (5) The Minister may include a native species in the vulnerable
29 category if satisfied that:
- 30 (a) it so closely resembles in appearance, at any stage of its
31 biological development, a species that is eligible to be
32 included in that category (see subsection 179(5)) that it is
33 difficult to differentiate between the 2 species; and

Section 187

- 1 (b) this difficulty poses an additional threat to the last-mentioned
2 species; and
3 (c) it would substantially promote the objects of this Act if the
4 first-mentioned species were regarded as vulnerable.

5 **187 Amending list of ecological communities**

- 6 (1) The Minister must not:
7 (a) include (whether as a result of a transfer or otherwise) an
8 ecological community in a particular category of the list; or
9 (b) delete (whether as a result of a transfer or otherwise) an
10 ecological community from a particular category;
11 unless satisfied that the ecological community is eligible, or is no
12 longer eligible, as the case requires, to be included in that category.
- 13 (2) In deciding whether to include an ecological community in, or
14 delete an ecological community from, a particular category
15 (whether as a result of a transfer or otherwise), the Minister must
16 not consider any matter that does not relate to the survival of the
17 ecological community concerned.

18 **188 Amending list of key threatening processes**

- 19 (1) The Minister must not add a threatening process to the list unless
20 satisfied that it is eligible to be treated as a key threatening process.
- 21 (2) The Minister must not delete a threatening process from the list
22 unless satisfied that it is no longer eligible to be treated as a key
23 threatening process.
- 24 (3) A process is a *threatening process* if it threatens, or may threaten,
25 the survival, abundance or evolutionary development of a native
26 species or ecological community.
- 27 (4) A threatening process is eligible to be treated as a key threatening
28 process if:

- 1 (a) it could cause a native species or an ecological community to
2 become eligible for listing in any category, other than
3 conservation dependent; or
4 (b) it could cause a listed threatened species or a listed
5 threatened ecological community to become eligible to be
6 listed in another category representing a higher degree of
7 endangerment; or
8 (c) it adversely affects 2 or more listed threatened species (other
9 than species included in the conservation dependent
10 category) or 2 or more listed threatened ecological
11 communities;
12 and the preparation and implementation of a nationally
13 co-ordinated threat abatement plan is a feasible, effective and
14 efficient way to abate the process.
- 15 (5) Before deciding whether a threatening process is eligible to be
16 treated as a key threatening process, the Minister must take
17 reasonable steps to consult with any Commonwealth agency, any
18 State, any self-governing Territory, and any agency of a State or
19 self-governing Territory, that would be affected by or interested in
20 abatement of the process, on the feasibility, effectiveness or
21 efficiency of preparing and implementing a nationally co-ordinated
22 threat abatement plan to abate the process.
- 23 (6) Nothing in subsection (5) is taken to prevent the Minister from
24 consulting with any other person or body.

25 **189 Minister must consider advice from Scientific Committee**

- 26 (1) Subject to section 192, in deciding whether to amend:
27 (a) the list referred to in section 178 or 181; or
28 (b) the list referred to in section 183;
29 the Minister must, in accordance with the regulations (if any),
30 obtain and consider advice from the Scientific Committee on the
31 proposed amendment.

Section 190

- 1 (2) In preparing advice under subsection (1), the Scientific Committee
2 may obtain advice from a person with expertise relevant to the
3 subject matter of the proposed amendment.
- 4 (3) In preparing advice for a proposed amendment of a list referred to
5 in paragraph (1)(a), the Scientific Committee must not consider
6 any matter that does not relate to the survival of the native species
7 or ecological community concerned.
- 8 (4) If a native species or ecological community has been nominated
9 under section 191 to be listed, the Scientific Committee must give
10 its advice to the Minister within 12 months, or such longer period
11 as the Minister specifies, after the Scientific Committee receives
12 the nomination from the Minister under that section.
- 13 (5) The Minister must:
14 (a) decide whether to amend the list; and
15 (b) if the Minister decides to amend the list—cause the necessary
16 instrument to be published in the *Gazette*;
17 within 90 days after receiving the Scientific Committee’s advice on
18 the amendment.
- 19 (6) A member of the Scientific Committee has a duty not to disclose to
20 any other person the advice, or any information relating to the
21 advice, before the end of that period of 90 days unless the
22 disclosure:
23 (a) is for the official purposes of the Scientific Committee; or
24 (b) if an instrument is published in the *Gazette* relating to an
25 amendment of a list to which the advice relates—occurred
26 after the publication.

27 **190 Scientific Committee may provide advice about species or**
28 **communities becoming threatened**

- 29 (1) If the Scientific Committee is of the opinion that a native species or
30 ecological community is not eligible to be included in any category
31 of the list mentioned in section 178 or 181, the Committee may

1 give advice to the Minister concerning any action that is necessary
2 to prevent the species or community becoming threatened.

3 (2) The Minister is to have regard to any advice given under
4 subsection (1) in performing any function, or exercising any
5 power, under this Act relevant to the species or community.

6 **191 Nomination of threatened species etc.**

7 (1) A person may, in accordance with the regulations (if any),
8 nominate to the Minister:
9 (a) a native species to be included in a particular category of the
10 list referred to in section 178; or
11 (b) an ecological community to be included a particular category
12 of the list referred to in section 181; or
13 (c) a threatening process to be included in the list referred to in
14 section 183.

15 (2) Subject to subsection (6), the Minister must forward all
16 nominations to the Scientific Committee.

17 (3) If the Minister decides that a nominated native species or
18 ecological community is not eligible to be included in the
19 nominated category, the Minister must, in accordance with the
20 regulations (if any):
21 (a) advise the person who made the nomination of the Minister's
22 decision; and
23 (b) give to that person a statement of reasons why the native
24 species or ecological community is not eligible to be
25 included in the nominated category.

26 (4) If the Minister decides that a threatening process is not eligible to
27 be listed, the Minister must, in accordance with the regulations (if
28 any):
29 (a) advise the person who made the nomination of the Minister's
30 decision; and

Section 192

- 1 (b) give to that person a statement of reasons why the threatening
2 process is not eligible to be listed.
- 3 (5) The Minister may, at any time, request a person who has made a
4 nomination to provide additional information about the subject of
5 the nomination within such period as the Minister specifies.
- 6 (6) The Minister may reject a nomination if satisfied that:
- 7 (a) the subject of the nomination has previously been nominated;
8 or
- 9 (b) the nomination is vexatious, frivolous or not made in good
10 faith; or
- 11 (c) the nomination has not been made in accordance with the
12 regulations (if any); or
- 13 (d) any additional information requested under subsection (5)
14 has not been provided within the specified period, or the
15 information that has been provided is incomplete.

16 **192 Rediscovery of threatened species that were extinct**

- 17 (1) If the Minister is satisfied that a native species that is listed in the
18 extinct category has been definitely located in nature since it was
19 last listed as extinct, the Minister may, under section 184, transfer
20 the species from the extinct category to another category without
21 considering advice from the Scientific Committee.
- 22 (2) Subsection (1) does not prevent the Minister from making such an
23 amendment after having considered advice from the Scientific
24 Committee.

25 **193 Species posing a serious threat to human health**

- 26 (1) If the Minister is satisfied that a native species poses a serious
27 threat to human health, the Minister may, by instrument published
28 in the *Gazette*, determine that the species is not appropriate for
29 inclusion in any of the categories of the list referred to in section
30 178.

- 1 (2) While the determination is in force, the species is not to be added
2 to that list.
- 3 (3) A determination is a disallowable instrument for the purposes of
4 section 46A of the *Acts Interpretation Act 1901*.
- 5 (4) The Minister must cause a notice summarising the information
6 contained in an instrument to be published in accordance with the
7 regulations (if any).

8 **194 Minister to make lists available to the public**

9 The Minister must, in accordance with the regulations (if any),
10 make copies of up-to-date lists available for purchase, for a
11 reasonable price, at a prescribed place in each State and
12 self-governing Territory.

13 **Subdivision B—Permit system**

14 **195 Subdivision does not apply to cetaceans**

15 This Subdivision does not apply to a member of a listed threatened
16 species that is a cetacean.

17 **196 Taking etc. certain listed threatened species or listed ecological**
18 **communities**

- 19 (1) Subject to section 197, a person is guilty of an offence if:
20 (a) the person kills, injures, takes, trades, keeps or moves a
21 member of a native species or an ecological community; and
22 (b) the member is a member of a listed threatened species (other
23 than a species included in the conservation dependent
24 category) or a listed threatened ecological community; and
25 (c) the member is in or on a Commonwealth area.

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

- 28 (2) Subject to section 197, a person is guilty of an offence if:
-

Section 197

- 1 (a) the person trades, keeps or moves a member of a native
2 species or an ecological community; and
3 (b) the member is a member of a listed threatened species (other
4 than a species included in the conservation dependent
5 category) or a listed threatened ecological community; and
6 (c) the member has been taken in or on a Commonwealth area.

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

- 9 (3) Strict liability applies to paragraphs (1)(c) and (2)(c).

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

- 11 (4) An offence against subsection (1) or (2) is punishable on
12 conviction by imprisonment for not more than 2 years or a fine not
13 exceeding 1,000 penalty units, or both.

14 **197 Section 196 does not apply to certain actions**

15 Section 196 does not apply to:

- 16 (a) an action authorised by a permit that is in force; or
17 (b) an action provided for by, and done in accordance with, a
18 recovery plan made or adopted under section 267 and that is
19 in force; or
20 (c) an action that is covered by an approval in operation under
21 Part 9 for the purposes of a subsection of section 18; or
22 (d) an action that:
23 (i) is one of a class of actions declared by the Minister
24 under section 33 not to require an approval under Part 9
25 for the purposes of a subsection of 18; and
26 (ii) is taken when the declaration is in operation; or
27 (e) an action that is taken in a humane manner and is reasonably
28 necessary to relieve or prevent suffering by a member of a
29 listed threatened species or listed threatened ecological
30 community; or
31 (f) an action that is reasonably necessary to prevent a risk to
32 human health; or
-

- 1 (g) an action by a Commonwealth agency, or an agency of a
2 State or of a self-governing Territory, that is reasonably
3 necessary for the purposes of law enforcement; or
4 (h) an action that is reasonably necessary to deal with an
5 emergency involving a serious threat to human life or
6 property; or
7 (i) an action that occurs as a result of an unavoidable accident,
8 other than an accident caused by negligent or reckless
9 behaviour; or
10 (j) an action that is taken in accordance with a permit issued
11 under regulations made under the *Great Barrier Reef Marine*
12 *Park Act 1975* and that is in force.

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

15 **198 Operation of section 18 not affected**

16 For the avoidance of doubt, sections 196 and 197 do not affect the
17 operation of section 18.

18 **199 Failing to notify taking of listed threatened species or listed** 19 **ecological community**

- 20 (1) Subject to subsection (2), this section applies to a person if:
21 (a) the person kills, injures, takes, trades, keeps or moves a
22 member of a listed threatened species (other than a species
23 included in the conservation dependent category) or a listed
24 threatened ecological community that is in or on a
25 Commonwealth area; and
26 (b) the person's act does not constitute an offence under section
27 196.
- 28 (2) This section does not apply to a person who is the holder of a
29 permit authorising the person's act.

30 Note: A person who is the holder of a permit may be required to give certain
31 notices in accordance with the conditions of the permit.

Section 200

- 1 (3) A person must, within 7 days after becoming aware of his or her
2 act, notify the Secretary in writing or by telephone, or by use of
3 any other electronic equipment:
4 (a) that the act occurred; and
5 (b) of such other particulars about the act (for example, the time
6 and place of the taking) as are prescribed (if any).
- 7 (4) Subsection (3) does not apply to a person if the person, or any
8 other person or body, is required by or under a law of the
9 Commonwealth to notify the Secretary of the first-mentioned
10 person's act.
- 11 (5) A person is guilty of an offence punishable on conviction by a fine
12 not exceeding 100 penalty units if the person:
13 (a) fails to do an act; and
14 (b) the failing to do the act results in a contravention of
15 subsection (3).
- 16 Note: Chapter 2 of the *Criminal Code* sets out the general principles of
17 criminal responsibility.

18 **200 Application for permits**

- 19 (1) A person may, in accordance with the regulations, apply to the
20 Minister for a permit to be issued under section 201.
- 21 (2) The application must be accompanied by the fee prescribed by the
22 regulations (if any).

23 **201 Minister may issue permits**

- 24 (1) Subject to subsection (3), the Minister may, on application by a
25 person under section 200, issue a permit to the person.
- 26 (2) A permit authorises its holder to take an action specified in the
27 permit without breaching section 196.
- 28 (3) The Minister must not issue the permit unless satisfied that:

- 1 (a) the specified action will contribute significantly to the
2 conservation of the listed threatened species or listed
3 threatened ecological community concerned; or
4 (b) the impact of the specified action on a member of the listed
5 threatened species or listed threatened ecological community
6 concerned is incidental to, and not the purpose of, the taking
7 of the action and:
8 (i) the taking of the action will not adversely affect the
9 survival or recovery in nature of that species or
10 ecological community; and
11 (ii) the taking of the action is not inconsistent with a
12 recovery plan that is in force for that species or
13 ecological community; and
14 (iii) the holder of the permit will take all reasonable steps to
15 minimise the impact of the action on that species or
16 ecological community; or
17 (c) the specified action is of particular significance to indigenous
18 tradition and will not adversely affect the survival or
19 recovery in nature of the listed threatened species or listed
20 threatened ecological community concerned; or
21 (d) the specified action is necessary in order to control pathogens
22 and is conducted in a way that will, so far as is practicable,
23 keep to a minimum any impact on the listed threatened
24 species or listed threatened ecological community concerned.

25 (4) In this Act:

26 *indigenous tradition* means the body of traditions, observances,
27 customs and beliefs of indigenous persons generally or of a
28 particular group of indigenous persons.

29 **202 Conditions of permits**

- 30 (1) A permit is subject to such conditions as are specified in the permit
31 or as are imposed under subsection (2).
32 (2) The Minister may, in accordance with the regulations:

Section 203

- 1 (a) vary or revoke a condition of a permit; or
2 (b) impose further conditions of a permit.
3 (3) Without limiting subsections (1) and (2), conditions of a permit
4 may include conditions stating the period within which the acts
5 specified in the permit may be done.

6 **203 Contravening conditions of a permit**

- 7 The holder of a permit is guilty of an offence punishable on
8 conviction by a fine not exceeding 300 penalty units if:
9 (a) he or she does, or fails to do, an act or thing; and
10 (b) doing, or failing to do, the act or thing results in a
11 contravention of a condition of the permit.

12 **204 Authorities under permits**

- 13 (1) Subject to subsection (2), the holder of a permit may give to a
14 person written authority to do for, or on behalf of, the holder any
15 act authorised by the permit. The authority may be given generally
16 or as otherwise provided by the instrument of authority.
17 (2) The holder of a permit must not give an authority unless:
18 (a) the permit contains a condition permitting the holder to do
19 so; and
20 (b) the authority is given in accordance with any requirements
21 set out in the condition.
22 (3) A permit is, for the purposes of this Act, taken to authorise the
23 doing of a particular act by a person if the doing of that act by the
24 person is authorised by an authority given by the holder of the
25 permit.
26 (4) The giving of an authority does not prevent the doing of any act by
27 the holder of the permit.

- 1 (5) Except as provided in this section, a permit does not authorise the
2 doing of any act by a person for or on behalf of the holder of the
3 permit.
- 4 (6) A person who gives an authority must give to the Minister written
5 notice of it within 14 days after giving the authority.

6 **205 Transfer of permits**

7 On the application, in accordance with the regulations, of the
8 holder of a permit, the Minister may, in accordance with the
9 regulations, transfer the permit to another person.

10 **206 Suspension or cancellation of permits**

11 The Minister may, in accordance with the regulations:
12 (a) suspend a permit for a specified period; or
13 (b) cancel a permit.

14 **207 Fees**

15 Such fees as are prescribed (if any) are payable in respect of the
16 following:
17 (a) the grant or the transfer of a permit;
18 (b) the variation or revocation of a condition of a permit;
19 (c) the imposition of a further condition of a permit.

20 **Subdivision C—Miscellaneous**

21 **208 Regulations**

22 The regulations may:
23 (a) provide for the transportation, treatment and disposal of
24 members of listed threatened species or listed threatened
25 ecological communities killed, injured or taken in
26 contravention of this Division; and

Chapter 5 Conservation of biodiversity

Part 13 Species and communities

Division 1 Listed threatened species and ecological communities

Section 208

- 1 (b) provide for the methods or equipment by which members of
2 listed threatened species or listed threatened ecological
3 communities may be killed or taken otherwise than in
4 contravention of this Division; and
- 5 (c) provide for the gathering and dissemination of information
6 relating to listed threatened species or listed threatened
7 ecological communities; and
- 8 (d) provide for the protection and conservation of listed
9 threatened species or listed threatened ecological
10 communities; and
- 11 (e) provide for any matter incidental to or connected with any of
12 the above paragraphs.

1

2 **Division 2—Migratory species**

3 **Subdivision A—Listing**

4 **209 Listed migratory species**

- 5 (1) The Minister must, by instrument published in the *Gazette*:
6 (a) establish a list of migratory species for the purposes of this
7 Act; and
8 (b) amend the list, as necessary, so that it includes all species
9 required to be included in the list under subsection (3).
- 10 (2) The Minister must establish the list within 30 days after the
11 commencement of this Act.
- 12 (3) The list must include:
13 (a) all species from time to time included in appendices to the
14 Bonn Convention and for which Australia is a Range State
15 under the Convention; and
16 (b) all species from time to time included in lists established
17 under JAMBA and CAMBA; and
18 (c) all native species from time to time identified in a list
19 established under, or an instrument made under, an
20 international agreement approved by the Minister under
21 subsection (4).
22 The list must not include any other species.
- 23 (4) The Minister may, by instrument published in the *Gazette*, approve
24 an international agreement for the purposes of subsection (3) if
25 satisfied it is an agreement relevant to the conservation of
26 migratory species.
- 27 (5) An instrument mentioned in subsection (4) is a disallowable
28 instrument for the purposes of section 46A of the *Acts*
29 *Interpretation Act 1901*.

Section 210

- 1 (6) The Minister may, by instrument published in the *Gazette*, correct
2 an inaccuracy or update the name of a migratory species.

3 **Subdivision B—Permit system**

4 **210 Subdivision does not apply to members of listed threatened**
5 **species or cetaceans**

6 This Subdivision does not apply to a member of a listed migratory
7 species that is a member of a listed threatened species or a
8 cetacean.

9 **211 Taking etc. listed migratory species**

- 10 (1) Subject to section 212, a person is guilty of an offence if:
11 (a) the person kills, injures, takes, trades, keeps or moves a
12 member of a migratory species; and
13 (b) the member is a member of a listed migratory species; and
14 (c) the member is in or on a Commonwealth area.

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

- 17 (2) Subject to section 212, a person is guilty of an offence if:
18 (a) the person trades, keeps or moves a member of a migratory
19 species; and
20 (b) the member is a member of a listed migratory species; and
21 (c) the member has been taken in or on a Commonwealth area.

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

- 24 (3) Strict liability applies to paragraphs (1)(c) and (2)(c).

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

- 26 (4) An offence against subsection (1) or (2) is punishable on
27 conviction by imprisonment for not more than 2 years or a fine not
28 exceeding 1,000 penalty units, or both.

1 **212 Section 211 does not apply to certain actions**

2 Section 211 does not apply to:

- 3 (a) an action authorised by a permit that is in force; or
4 (b) an action provided for by, and taken in accordance with, a
5 wildlife conservation plan made or adopted under Division 5
6 and that is in force; or
7 (c) an action that is covered by an approval in operation under
8 Part 9 for the purposes of subsection 20(1); or
9 (d) an action that:
10 (i) is one of a class of actions declared by the Minister
11 under section 33 not to require an approval under Part 9
12 for the purposes of subsection 20(1); and
13 (ii) is taken when the declaration is in operation; or
14 (e) an action that is taken in a humane manner and is reasonably
15 necessary to relieve or prevent suffering by a member of a
16 listed migratory species; or
17 (f) an action that is reasonably necessary to prevent a risk to
18 human health; or
19 (g) an action by a Commonwealth agency, or an agency of a
20 State or of a self-governing Territory, that is reasonably
21 necessary for the purposes of law enforcement; or
22 (h) an action that is reasonably necessary to deal with an
23 emergency involving a serious threat to human life or
24 property; or
25 (i) an action that occurs as a result of an unavoidable accident,
26 other than an accident caused by negligent or reckless
27 behaviour; or
28 (j) an action that is taken in accordance with a permit issued
29 under regulations made under the *Great Barrier Reef Marine*
30 *Park Act 1975* and that is in force.

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

Section 213

1 **213 Operation of section 20 not affected**

2 For the avoidance of doubt, sections 211 and 212 do not affect the
3 operation of section 20.

4 **214 Failing to notify taking etc. of listed migratory species**

5 (1) Subject to subsection (2), this section applies to a person if:
6 (a) the person kills, injures, takes, trades, keeps or moves a
7 member of a listed migratory species that is in or on a
8 Commonwealth area; and
9 (b) the person's act does not constitute an offence under section
10 211.

11 (2) This section does not apply to a person who is the holder of a
12 permit authorising the person's act.

13 Note: A person who is the holder of a permit may be required to give certain
14 notices in accordance with the conditions of the permit.

15 (3) A person must, within 7 days after becoming aware of his or her
16 act, notify the Secretary in writing or by telephone or by use of any
17 other electronic equipment:

18 (a) that the act occurred; and
19 (b) of such other particulars about the act (for example, the time
20 and place of the taking) as are prescribed (if any).

21 (4) Subsection (3) does not apply to a person if the person, or any
22 other person or body, is required or authorised by or under a law of
23 the Commonwealth to notify the Secretary of the first-mentioned
24 person's act.

25 (5) A person is guilty of an offence punishable on conviction by a fine
26 not exceeding 100 penalty units if the person:

27 (a) fails to do an act; and
28 (b) the failing to do the act results in a contravention of
29 subsection (3).

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

1 **215 Application for permits**

2 (1) A person may, in accordance with the regulations, apply to the
3 Minister for a permit to be issued under section 216.

4 (2) The application must be accompanied by the fee prescribed by the
5 regulations (if any).

6 **216 Minister may issue permits**

7 (1) Subject to subsection (3), the Minister may, on application by a
8 person under section 215, issue a permit to the person.

9 (2) A permit authorises its holder to take an action specified in the
10 permit without breaching section 211.

11 (3) The Minister must not issue the permit unless satisfied that:

12 (a) the specified action will contribute significantly to the
13 conservation of the listed migratory species concerned or
14 other listed migratory species; or

15 (b) the impact of the specified action on a member of the listed
16 migratory species concerned is incidental to, and not the
17 purpose of, the taking of the action and:

18 (i) the taking of the action will not adversely affect the
19 conservation status of that species or a population of
20 that species; and

21 (ii) the taking of the action is not inconsistent with a
22 wildlife conservation plan for that species that is in
23 force; and

24 (iii) the holder of the permit will take all reasonable steps to
25 minimise the impact of the action on that species; or

26 (c) the specified action is of particular significance to indigenous
27 tradition and will not adversely affect the conservation status
28 of the listed migratory species concerned, or a population of
29 that species; or

30 (d) the specified action is necessary in order to control pathogens
31 and is conducted in a way that will, so far as is practicable,

Section 217

1 keep to a minimum any impact on the listed migratory
2 species concerned.

3 **217 Conditions of permits**

4 (1) A permit is subject to such conditions as are specified in the permit
5 or as are imposed under subsection (2).

6 (2) The Minister may, in accordance with the regulations:

- 7 (a) vary or revoke a condition of a permit; or
8 (b) impose further conditions of a permit.

9 **218 Contravening conditions of a permit**

10 The holder of a permit is guilty of an offence punishable on
11 conviction by a fine not exceeding 300 penalty units if:

- 12 (a) he or she does, or fails to do, an act or thing; and
13 (b) doing, or failing to do, the act or thing results in a
14 contravention of a condition of the permit.

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

17 **219 Authorities under permits**

18 (1) Subject to subsection (2), the holder of a permit may give to a
19 person written authority to do for, or on behalf of, the holder any
20 act authorised by the permit. The authority may be given generally
21 or as otherwise provided by the instrument of authority.

22 (2) The holder of a permit must not give an authority unless:

- 23 (a) the permit contains a condition permitting the holder to do
24 so; and
25 (b) the authority is given in accordance with any requirements
26 set out in the condition.

27 (3) A permit is, for the purposes of this Act, taken to authorise the
28 doing of a particular act by a person if the doing of that act by the

1 person is authorised by an authority given by the holder of the
2 permit.

3 (4) The giving of an authority does not prevent the doing of any act by
4 the holder of the permit.

5 (5) Except as provided in this section, a permit does not authorise the
6 doing of any act by a person for or on behalf of the holder of the
7 permit.

8 (6) A person who gives an authority must give to the Minister written
9 notice of it within 14 days after giving the authority.

10 **220 Transfer of permits**

11 On the application, in accordance with the regulations, of the
12 holder of a permit, the Minister may, in accordance with the
13 regulations, transfer the permit to another person.

14 **221 Suspension or cancellation of permits**

15 The Minister may, in accordance with the regulations:

- 16 (a) suspend a permit for a specified period; or
17 (b) cancel a permit.

18 **222 Fees**

19 Such fees as are prescribed (if any) are payable in respect of the
20 following:

- 21 (a) the grant or the transfer of a permit;
22 (b) the variation or revocation of a condition of a permit;
23 (c) the imposition of a further condition of a permit.

24 **Subdivision C—Miscellaneous**

25 **223 Regulations**

26 The regulations may:

Chapter 5 Conservation of biodiversity

Part 13 Species and communities

Division 2 Migratory species

Section 223

- 1 (a) provide for the transportation, treatment and disposal of
2 members of listed migratory species killed, injured or taken
3 in contravention of this Division; and
4 (b) provide for the methods or equipment by which members of
5 listed migratory species may be killed or taken otherwise
6 than in contravention of this Division; and
7 (c) provide for the gathering and dissemination of information
8 relating to listed migratory species; and
9 (d) provide for the protection and conservation of listed
10 migratory species; and
11 (e) provide for any matter incidental to or connected with any of
12 the above paragraphs.

1

2 **Division 3—Whales and other cetaceans**

3 **Subdivision A—Application of Division**

4 **224 Application of Division**

- 5 (1) This Division extends to acts, omissions, matters and things
6 outside Australia (whether in a foreign country or not), except so
7 far as the contrary intention appears.
- 8 (2) A provision of this Division that has effect in relation to a place
9 outside the outer limits of the Australian Whale Sanctuary applies
10 only in relation to:
- 11 (a) Australian citizens; and
 - 12 (b) persons who:
 - 13 (i) are not Australian citizens; and
 - 14 (ii) hold permanent visas under the *Migration Act 1958*; and
 - 15 (iii) are domiciled in Australia or an external Territory; and
 - 16 (c) corporations incorporated in Australia or an external
17 Territory; and
 - 18 (d) the Commonwealth; and
 - 19 (e) Commonwealth agencies; and
 - 20 (f) Australian aircraft; and
 - 21 (g) Australian vessels; and
 - 22 (h) members of crews of Australian aircraft and Australian
23 vessels (including persons in charge of aircraft or vessels).
- 24 (3) This Division applies to a vessel as if it were an Australian vessel
25 if:
- 26 (a) the vessel is a boat within the meaning of the *Fisheries*
27 *Management Act 1991*; and
 - 28 (b) a declaration, under subsection 4(2) of that Act, that the
29 vessel is taken to be an Australian boat is in force.

1 **Subdivision B—Australian Whale Sanctuary**

2 **225 Australian Whale Sanctuary**

3 (1) The Australian Whale Sanctuary is established in order to give
4 formal recognition of the high level of protection and management
5 afforded to cetaceans in Commonwealth marine areas and
6 prescribed waters.

7 (2) The Australian Whale Sanctuary comprises:

8 (a) the waters of the exclusive economic zone (other than the
9 coastal waters of a State or the Northern Territory); and

10 (b) so much of the coastal waters of a State or the Northern
11 Territory as are prescribed waters; and

12 (c) any marine or tidal waters that are inside the baseline of the
13 territorial sea adjacent to an external Territory, whether or
14 not within the limits of an external Territory.

15 Note: Generally the baseline is the lowest astronomical tide along the coast
16 but it also includes lines enclosing bays and indentations that are not
17 bays and straight baselines that depart from the coast.

18 **226 Prescribed waters**

19 (1) The regulations may declare the whole, or a specified part, of the
20 coastal waters of a State or the Northern Territory to be prescribed
21 waters.

22 (2) Before the Governor-General makes a regulation under subsection
23 (1), the Minister must obtain the agreement of the relevant Minister
24 of the State or the Northern Territory.

25 **227 Coastal waters**

26 (1) Section 15B of the *Acts Interpretation Act 1901* does not apply in
27 relation to this Division.

28 (2) The *coastal waters* of a State or the Northern Territory are:

29 (a) the part or parts of the territorial sea that are:

- 1 (i) within 3 nautical miles of the baseline of the territorial
2 sea; and
3 (ii) adjacent to that State or Territory; and
4 (b) any marine or tidal waters that are inside that baseline and
5 are adjacent to that State or Territory but are not within the
6 limits of a State or that Territory.

7 Note: Generally the baseline is the lowest astronomical tide along the coast
8 but it also includes lines enclosing bays and indentations that are not
9 bays and straight baselines that depart from the coast.

- 10 (3) Any part of the territorial sea that is adjacent to the Jarvis Bay
11 Territory is, for the purposes of subsection (2), taken to be adjacent
12 to New South Wales.

13 **228 Minister may make declaration for coastal waters**

- 14 (1) If the Minister is satisfied that a law of a State or the Northern
15 Territory adequately protects cetaceans in the coastal waters, or a
16 part of the coastal waters, of the State or Territory, the Minister
17 may make a declaration accordingly, whether or not those coastal
18 waters or that part are prescribed waters.
19 (2) A declaration must be in writing.

20 **Subdivision C—Offences**

21 **229 Killing etc. cetaceans**

- 22 (1) Subject to section 231, a person is guilty of an offence if:
23 (a) the person kills, injures, takes, trades, keeps, moves or
24 interferes with a cetacean; and
25 (b) the cetacean is:
26 (i) in the Australian Whale Sanctuary, other than the
27 coastal waters, or a part of the coastal waters, of a State
28 or the Northern Territory for which a declaration under
29 section 228 is in force; or

Section 230

1 (ii) in waters beyond the outer limits of the Australian
2 Whale Sanctuary.

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

5 (2) Subject to section 231, a person is guilty of an offence if:

6 (a) the person treats a cetacean; and

7 (b) the cetacean has been killed or taken in contravention of
8 subsection (1).

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

11 (3) Strict liability applies to paragraph (1)(b).

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

13 (4) An offence against subsection (1) or (2) is punishable on
14 conviction by imprisonment for not more than 2 years or a fine not
15 exceeding 1,000 penalty units, or both.

16 (5) In this Act:

17 *interfere* with a cetacean includes to harass, chase, herd, tag, mark
18 or brand the cetacean.

19 *treat* a cetacean means to divide or cut up, or extract any product
20 from, the cetacean.

21 **230 Possession of cetaceans**

22 (1) Subject to section 231, a person is guilty of an offence if:

23 (a) the person has in his or her possession:

24 (i) a cetacean; or

25 (ii) a part of a cetacean; or

26 (iii) a product derived from a cetacean; and

27 (b) the cetacean has been killed, injured or taken in
28 contravention of subsection 229(1).

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

- 1 (2) An offence against this section is punishable on conviction by
2 imprisonment for not more than 2 years or a fine not exceeding
3 1,000 penalty units, or both.

4 **231 Sections 229 and 230 do not apply to certain actions**

5 Sections 229 and 230 do not apply to:

- 6 (a) an action authorised by a permit that is in force; or
7 (b) an action provided for by, and taken in accordance with, a
8 recovery plan, or a wildlife conservation plan, made or
9 adopted under Division 5 and that is in force; or
10 (c) an action that is taken in a humane manner and is reasonably
11 necessary to relieve or prevent suffering of a cetacean; or
12 (d) an action that is reasonably necessary to prevent a risk to
13 human health; or
14 (e) an action by a Commonwealth agency, or an agency of a
15 State or of a self-governing Territory, that is reasonably
16 necessary for the purposes of law enforcement; or
17 (f) an action that is reasonably necessary to deal with an
18 emergency involving a serious threat to human life or
19 property; or
20 (g) an action that occurs as a result of an unavoidable accident,
21 other than an accident caused by negligent or reckless
22 behaviour; or
23 (h) in the case of an action taken in relation to a cetacean that is
24 not a member of a listed threatened species—the action was
25 provided for by, and taken in accordance with, a plan of
26 management that is accredited under section 245.

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

29 **232 Action to be taken on killing etc. cetaceans**

- 30 (1) Subject to subsection (2), this section applies to a person if:
31 (a) the person:

Section 232

- 1 (i) kills, injures or takes a cetacean in the Australian Whale
2 Sanctuary other than the coastal waters, or a part of the
3 coastal waters, of a State or the Northern Territory for
4 which a declaration under section 228 is in force; or
5 (ii) kills, injures or takes a cetacean in waters beyond the
6 outer limits of the Australian Whale Sanctuary; or
7 (iii) treats a cetacean that has been killed, injured or taken in
8 contravention of subsection 229(1); and
9 (b) the person's act does not constitute an offence under section
10 229.

- 11 (2) This section does not apply to a person who is the holder of a
12 permit authorising the person's act.

13 Note: A person who is the holder of a permit may be required to give certain
14 notices in accordance with the conditions of the permit.

- 15 (3) A person must, within 7 days after becoming aware of his or her
16 act, notify the Secretary in writing or by telephone or by use of any
17 other electronic equipment:
18 (a) that the act occurred; and
19 (b) of such other particulars about the act (for example, when
20 and where the act was done) as are prescribed.

- 21 (4) Subsection (3) does not apply to a person if the person, or any
22 other person or body, is required by or under a law of the
23 Commonwealth to notify the Secretary of the first-mentioned
24 person's act.

- 25 (5) A person is guilty of an offence punishable on conviction by a fine
26 not exceeding 100 penalty units if the person:
27 (a) fails to do an act; and
28 (b) the failing to do the act results in a contravention of
29 subsection (3).

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

1 **Subdivision D—Offences relating to unlawful importation**

2 **233 Possession of unlawfully imported cetaceans**

3 (1) Subject to section 235, a person is guilty of an offence if:

4 (a) the person has in his or her possession:

5 (i) a cetacean; or

6 (ii) a part of a cetacean; or

7 (iii) a product derived from a cetacean; and

8 (b) the cetacean has been unlawfully imported.

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

11 (2) An offence against this section is punishable on conviction by
12 imprisonment for not more than 2 years or a fine not exceeding
13 1,000 penalty units, or both.

14 **234 Treating unlawfully imported cetaceans**

15 (1) Subject to section 235, a person is guilty of an offence if:

16 (a) the person treats a cetacean; and

17 (b) the cetacean has been unlawfully imported.

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

20 (2) An offence against this section is punishable on conviction by
21 imprisonment for not more than 2 years or a fine not exceeding
22 1000 penalty units, or both.

23 **235 Sections 233 and 234 do not apply to certain actions**

24 Sections 233 and 234 do not apply to:

25 (a) an action authorised by a permit that is in force; or

26 (b) an action provided for by, and taken in accordance with, a
27 recovery plan, or a wildlife conservation plan, made or
28 adopted under Division 5 and that is in force; or

Section 236

- 1 (c) an action that is taken in a humane manner and is reasonably
2 necessary to relieve or prevent suffering by a cetacean; or
3 (d) an action that is reasonably necessary to prevent a risk to
4 human health; or
5 (e) an action by a Commonwealth agency, or an agency of a
6 State or of a self-governing Territory, that is reasonably
7 necessary for the purposes of law enforcement; or
8 (f) an action that is reasonably necessary to deal with an
9 emergency involving a serious threat to human life or
10 property; or
11 (g) an action that occurs as a result of an unavoidable accident,
12 other than an accident caused by negligent or reckless
13 behaviour.

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

16 **Subdivision E—Miscellaneous offences**

17 **236 Offences relating to foreign whaling vessels**

- 18 (1) The master of a foreign whaling vessel is guilty of an offence if the
19 vessel is brought into a port in Australia or an external Territory
20 and the master has not obtained the written permission of the
21 Minister for the vessel to be brought into the port.

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

- 24 (2) Subsection (1) is an offence of strict liability.

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

- 26 (3) An offence against subsection (1) is punishable on conviction by a
27 fine not exceeding 500 penalty units.

- 28 (4) Subsection (1) does not apply if:

- 29 (a) the vessel is brought into the port in accordance with a
30 prescribed agreement between Australia and any other
31 country or countries; or

- 1 (b) the vessel is brought into the port under the direction of a
2 person exercising powers under a law of the Commonwealth
3 or of a State; or
4 (c) an unforeseen emergency renders it necessary to bring the
5 vessel into the port in order to secure the safety of the vessel
6 or human life.

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

9 (5) In this Act:

10 *foreign whaling vessel* means a vessel, other than an Australian
11 vessel, designed, equipped or used for:

- 12 (a) killing, taking, treating or carrying whales; or
13 (b) supporting the operations of a vessel or vessels designed,
14 equipped or used for killing, taking, treating or carrying
15 whales.

16 *master*, in relation to a foreign whaling vessel, means the person
17 (other than a ship's pilot) in charge or command of the vessel.

18 **Subdivision F—Permit system**

19 **237 Application for permits**

- 20 (1) A person may, in accordance with the regulations, apply to the
21 Minister for a permit to be issued under section 238.
22 (2) The application must be accompanied by the fee prescribed by the
23 regulations (if any).

24 **238 Minister may issue permits**

- 25 (1) Subject to subsections (3) and (4), the Minister may, on application
26 by a person under section 237, issue a permit to the person.
27 (2) A permit authorises its holder to take an action specified in the
28 permit without breaching sections 229, 230, 233 and 234.

Section 239

- 1 (3) The Minister must not issue the permit unless satisfied that:
2 (a) the specified action will contribute significantly to the
3 conservation of cetaceans; or
4 (b) if the specified action will interfere with cetaceans, the
5 interference is incidental to, and not the purpose of, the
6 taking of the action and:
7 (i) the taking of the action will not adversely affect the
8 conservation status of a species of cetacean or a
9 population of that species; and
10 (ii) the taking of the action is not inconsistent with a
11 recovery plan or wildlife conservation plan that is in
12 force for a species of cetacean; and
13 (iii) the holder of the permit will take all reasonable steps to
14 minimise the interference with cetaceans; or
15 (c) the specified action is whale watching and is carried out in
16 accordance with the regulations (if any) made for the
17 purposes of this section.

18 (4) The Minister must not grant a permit authorising its holder to kill a
19 cetacean or to take a cetacean for live display.

20 (5) In this Act:

21 *whale watching* means any activity conducted for the purpose of
22 observing a whale, including but not limited to being in the water
23 for the purposes of observing or swimming with a whale, or
24 otherwise interacting with a whale.

25 **239 Conditions of permits**

26 (1) A permit is subject to such conditions as are specified in the permit
27 or as are imposed under subsection (2).

28 (2) The Minister may, in accordance with the regulations:

- 29 (a) vary or revoke a condition of a permit; or
30 (b) impose further conditions of a permit.

1 **240 Contravening conditions of a permit**

2 The holder of a permit is guilty of an offence punishable upon
3 conviction by a fine not exceeding 300 penalty units if:

- 4 (a) he or she does, or fails to do, an act or thing; and
5 (b) doing, or failing to do, the act or thing results in a
6 contravention of a condition of the permit.

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

9 **241 Authorities under permits**

10 (1) Subject to subsection (2), the holder of a permit may give to a
11 person written authority to do for or on behalf of the holder any act
12 authorised by the permit. The authority may be given generally or
13 as otherwise provided by the instrument of authority.

14 (2) The holder of a permit must not give an authority unless:
15 (a) the permit contains a condition permitting the holder to do
16 so; and
17 (b) the authority is given in accordance with any requirements
18 set out in the condition.

19 (3) A permit is, for the purposes of this Act, taken to authorise the
20 doing of a particular act by a person if the doing of that act by the
21 person is authorised by an authority given by the holder of the
22 permit.

23 (4) The giving of an authority does not prevent the doing of any act by
24 the holder of the permit.

25 (5) Except as provided in this section, a permit does not authorise the
26 doing of any act by a person for or on behalf of the holder of the
27 permit.

28 (6) A person who gives an authority must give to the Minister written
29 notice of it within 14 days after giving the authority.

Section 242

1 **242 Transfer of permits**

2 On the application, in accordance with the regulations, of the
3 holder of a permit, the Minister may, in accordance with the
4 regulations, transfer the permit to another person.

5 **243 Suspension or cancellation of permits**

6 The Minister may, in accordance with the regulations:

- 7 (a) suspend a permit for a specified period; or
8 (b) cancel a permit.

9 **244 Fees**

10 Such fees as are prescribed (if any) are payable in respect of the
11 following:

- 12 (a) the grant or the transfer of a permit;
13 (b) the variation or revocation of a condition of a permit;
14 (c) the imposition of a further condition of a permit.

15 **Subdivision G—Miscellaneous**

16 **245 Minister may accredit plans of management**

17 The Minister may, by instrument in writing, accredit for the
18 purposes of this Division:

- 19 (a) a plan of management within the meaning of section 17 of
20 the *Fisheries Management Act 1991*; or
21 (b) a plan of management for a fishery made by a State or
22 self-governing Territory and that is in force in the State or
23 Territory;

24 if satisfied that:

- 25 (c) the plan requires persons engaged in fishing under the plan to
26 take all reasonable steps to ensure that cetaceans are not
27 killed or injured as a result of the fishing; and

- 1 (d) the fishery to which the plan relates does not, or is not likely
2 to, adversely affect the conservation status of a species of
3 cetacean or a population of that species.

4 **246 Vesting of whales in Commonwealth**

- 5 (1) If:
6 (a) a cetacean is:
7 (i) in the Australian Whale Sanctuary, other than the
8 coastal waters, or a part of the coastal waters, of a State
9 or the Northern Territory for which a declaration under
10 section 228 is in force; or
11 (ii) in waters beyond the outer limits of the Australian
12 Whale Sanctuary; and
13 (a) a person kills, injures or takes the cetacean, whether or not in
14 contravention of this Division;
15 the cetacean vests, by force of this section, in the Commonwealth.
16 (2) The Commonwealth is not liable in any action, suit or proceedings
17 in respect of any matter relating to a cetacean at any time before
18 the taking of possession of the cetacean by the Commonwealth.

19 **247 Regulations**

- 20 The regulations may:
21 (a) provide for the transportation, treatment and disposal of
22 cetaceans killed, injured or taken in contravention of this
23 Division; and
24 (b) provide for the methods or equipment by which cetaceans
25 may be killed, taken or interfered with otherwise than in
26 contravention of this Division; and
27 (c) provide for the gathering and dissemination of information
28 relating to cetaceans; and
29 (d) provide for the protection and conservation of cetaceans; and
30 (e) provide for any matter incidental to or connected with any of
31 the above paragraphs.

1

2 **Division 4—Listed marine species**

3 **Subdivision A—Listing**

4 **248 Listed marine species**

- 5 (1) The Minister must, by instrument published in the *Gazette*,
6 establish a list of marine species for the purposes of this Part.
- 7 (2) The list, as first established, must contain only the following:
8 (a) all members of the Family Hydrophiidae;
9 (b) all members of the Family Laticaudidae;
10 (c) all members of the Order Pinnipedia;
11 (d) all members of the Genus *Crocodylus*;
12 (e) all members of the Genus *Dugong*;
13 (f) all members of the Family Cheloniidae;
14 (g) all members of the Species *Dermochelys coriacea*;
15 (h) all members of the Family Syngnathidae;
16 (i) all members of the Family Solenostomidae;
17 (j) all members of the Class Aves that occur naturally in
18 Commonwealth marine areas.
- 19 (3) The Minister must establish the list within 30 days after the
20 commencement of this Act.
- 21 (4) The Minister must cause a notice summarising the information
22 contained in the instrument to be published in accordance with the
23 regulations (if any).

24 **249 Minister may amend list**

- 25 (1) Subject to this Subdivision, the Minister may, by instrument
26 published in the *Gazette*, amend the list:
27 (a) by including items in the list; or
28 (b) by deleting items from the list; or
-

- 1 (c) by correcting an inaccuracy or updating the name of a marine
2 species.
- 3 (2) An instrument mentioned in paragraph (1)(a) or (b) is a
4 disallowable instrument for the purposes of section 46A of the *Acts*
5 *Interpretation Act 1901*.
- 6 (3) Despite section 48 of the *Acts Interpretation Act 1901* as it applies
7 in relation to an instrument because of section 46A of that Act,
8 amendments of a list that delete items from the list take effect on
9 the first day on which they are no longer liable to be disallowed, or
10 to be taken to have been disallowed, under section 48 of that Act as
11 it so applies.
- 12 (4) When an instrument is laid before each House of the Parliament in
13 accordance with section 48 of the *Acts Interpretation Act 1901*, the
14 Minister must cause a statement to be laid before each House with
15 the instrument explaining:
- 16 (a) in the case of an item that has been included in the list by the
17 instrument—why the item was so included; or
18 (b) in the case of an item that has been deleted from the list by
19 the instrument—why the item was so deleted.
- 20 (5) The Minister must cause a notice summarising the information
21 contained in an instrument to be published in accordance with the
22 regulations (if any).

23 **250 Adding marine species to the list**

- 24 (1) The Minister must not add a marine species to the list unless:
25 (a) the Minister is satisfied that it is necessary to include the
26 species in the list in order to ensure the long-term
27 conservation of the species; and
28 (b) the species occurs naturally in a Commonwealth marine area.
- 29 (2) Before adding a marine species to the list, the Minister must
30 consult with each Minister who has an interest in a Commonwealth
31 marine area where the species occurs naturally.

Section 251

1 **251 Minister must consider advice from Scientific Committee**

2 (1) In deciding whether to add an item to, or delete an item from, the
3 list, the Minister must, in accordance with the regulations (if any),
4 obtain and consider advice from the Scientific Committee on the
5 scientific aspects of the addition or deletion of the item concerned.

6 (2) The Minister must:

7 (a) decide whether to add an item to, or delete an item from, the
8 list; and

9 (b) if the Minister decides to add or delete the item—cause the
10 necessary instrument to be published in the *Gazette*;
11 within 90 days after receiving the Scientific Committee’s advice on
12 the addition or deletion of the item.

13 (3) A member of the Scientific Committee has a duty not to disclose to
14 any other person the advice, or any information relating to the
15 advice, before the end of that period of 90 days unless the
16 disclosure:

17 (a) is for the official purposes of the Scientific Committee; or

18 (b) if an instrument is published in the *Gazette* relating to an
19 addition or deletion to which the advice relates—occurred
20 after the publication.

21 **252 Minister to make lists available to the public**

22 The Minister must, in accordance with the regulations (if any),
23 make copies of up-to-date lists available for purchase, for a
24 reasonable price, at a prescribed place in each State and
25 self-governing Territory.

1 **Subdivision B—Permit system**

2 **253 Subdivision does not apply to members of certain species and**
3 **cetaceans**

4 This Subdivision does not apply to a member of a listed marine
5 species that is a member of a listed migratory species, a member of
6 a listed threatened species or a cetacean.

7 **254 Taking etc. listed marine species**

8 (1) Subject to section 255, a person is guilty of an offence if:

- 9 (a) the person kills, injures, takes, trades, keeps or moves a
10 member of a marine species; and
11 (b) the member is a member of a listed marine species; and
12 (c) the member is in or on a Commonwealth area.

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

15 (2) Subject to section 255, a person is guilty of an offence if:

- 16 (a) the person trades, keeps or moves a member of a marine
17 species; and
18 (b) the member is a member of a listed marine species; and
19 (c) the member has been taken in or on a Commonwealth area.

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

22 (3) Strict liability applies to paragraphs (1)(c) and (2)(c).

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

24 (4) An offence against subsection (1) or (2) is punishable on
25 conviction by imprisonment for not more than 2 years or a fine not
26 exceeding 1,000 penalty units, or both.

27 **255 Section 254 does not apply to certain actions**

28 Section 254 does not apply to:

Chapter 5 Conservation of biodiversity

Part 13 Species and communities

Division 4 Listed marine species

Section 255

- 1 (a) an action authorised by a permit that is in force; or
2 (b) an action provided for by, and taken in accordance with, a
3 wildlife conservation plan made under Division 5 and that is
4 in force; or
5 (c) an action that is covered by an approval in operation under
6 Part 9 for the purposes of subsection 23(1) or (2), or
7 subsection 26(1) or (2); or
8 (d) an action that:
9 (i) is one of a class of actions declared by the Minister
10 under section 33 not to require an approval under Part 9
11 for the purposes of subsection 23(1) or (2), or
12 subsection 26(1) or (2); and
13 (ii) is taken when the declaration is in operation; or
14 (e) an action that is taken in a humane manner and is reasonably
15 necessary to relieve or prevent suffering by an animal; or
16 (f) an action that is reasonably necessary to prevent a risk to
17 human health; or
18 (g) an action by a Commonwealth agency, or an agency of a
19 State or of a self-governing Territory, that is reasonably
20 necessary for the purposes of law enforcement; or
21 (h) an action that is reasonably necessary to deal with an
22 emergency involving a serious threat to human life or
23 property; or
24 (i) an action that occurs as a result of an unavoidable accident,
25 other than an accident caused by negligent or reckless
26 behaviour; or
27 (j) an action taken in accordance with a permit issued under
28 regulations made under the *Great Barrier Reef Marine Park*
29 *Act 1975*.
30 (k) an action provided for by, and taken in accordance with, a
31 plan of management that is accredited under section 265.

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

1 **256 Failing to notify unintended taking of listed marine wildlife**

- 2 (1) Subject to subsection (2), this section applies to a person if:
3 (a) the person kills, injures, takes, trades, keeps or moves a
4 member of a listed marine species; and
5 (b) the member is in or on a Commonwealth area; and
6 (c) the person's act does not constitute an offence under section
7 254.

- 8 (2) This section does not apply to the holder of a permit authorising
9 the person's act.

10 Note: A person who is the holder of a permit may be required to give certain
11 notices in accordance with the conditions of the permit.

- 12 (3) A person must, within 7 days after becoming aware of his or her
13 act, notify the Secretary in writing or by telephone or by use of any
14 other electronic equipment:

- 15 (a) that the act has occurred; and
16 (b) of such other particulars about the act (for example, the time
17 and place of the taking) as are prescribed (if any).

- 18 (4) Subsection (3) does not apply to a person if the person, or any
19 other person or body, is required by or under a law of the
20 Commonwealth to notify the Secretary of the first-mentioned
21 person's act.

- 22 (5) A person is guilty of an offence punishable on conviction by a fine
23 not exceeding 100 penalty units if a person:

- 24 (a) fails to do an act; and
25 (b) the failing to do the act results in a contravention of
26 subsection (3).

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

29 **257 Application for permits**

- 30 (1) A person may, in accordance with the regulations, apply to the
31 Minister for a permit to be issued under section 258.
-

Section 258

- 1 (2) The application must be accompanied by the fee prescribed by the
2 regulations (if any).

3 **258 Minister may issue permits**

- 4 (1) Subject to subsection (3), the Minister may, on application by a
5 person under section 257, issue a permit to the person.
- 6 (2) A permit authorises its holder to take the actions specified in the
7 permit without breaching section 254.
- 8 (3) The Minister must not issue the permit unless satisfied that:
- 9 (a) the specified action will significantly contribute to the
10 conservation of the listed marine species concerned or other
11 listed marine species; or
- 12 (b) the impact of the specified action on a member of the listed
13 marine species concerned is incidental to, and not the
14 purpose of, the taking of the action and:
- 15 (i) the taking of the action will not adversely affect the
16 conservation status of that species or a population of
17 that species; and
- 18 (ii) the taking of the action is not inconsistent with a
19 wildlife conservation plan for that species that is in
20 force; and
- 21 (iii) the holder of the permit will take all reasonable steps to
22 minimise the impact of the action on that species; or
- 23 (c) the specified action is of particular significance to indigenous
24 tradition and will not adversely affect the conservation status
25 of the listed marine species concerned; or
- 26 (d) the specified action is necessary in order to control pathogens
27 and are conducted in a way that will, so far as is practicable,
28 keep to a minimum any impact on the listed marine species
29 concerned.

1 **259 Conditions of permits**

- 2 (1) A permit is subject to such conditions as are specified in the permit
3 or as are imposed under subsection (2).
- 4 (2) The Minister may, in accordance with the regulations:
5 (a) vary or revoke a condition of a permit; or
6 (b) impose further conditions of a permit.

7 **260 Contravening conditions of a permit**

8 The holder of a permit is guilty of an offence punishable upon
9 conviction by a fine not exceeding 300 penalty units if:
10 (a) he or she does, or fails to do, an act or thing; and
11 (b) doing, or failing to do, the act or thing results in a
12 contravention of a condition of the permit.

13 **261 Authorities under permits**

- 14 (1) Subject to subsection (2), the holder of a permit may give to a
15 person written authority to do for or on behalf of the holder any act
16 authorised by the permit. The authority may be given generally or
17 as otherwise provided by the instrument of authority.
- 18 (2) The holder of a permit must not give an authority unless:
19 (a) the permit contains a condition permitting the holder to do
20 so; and
21 (b) the authority is given in accordance with any requirements
22 set out in the condition.
- 23 (3) A permit is, for the purposes of this Act, taken to authorise the
24 doing of a particular act by a person if the doing of that act by the
25 person is authorised by an authority given by the holder of the
26 permit.
- 27 (4) The giving of an authority does not prevent the doing of any act by
28 the holder of the permit.

Section 262

1 (5) Except as provided in this section, a permit does not authorise the
2 doing of any act by a person for or on behalf of the holder of the
3 permit.

4 (6) A person who gives an authority must give to the Minister written
5 notice of it within 14 days after giving the authority.

6 **262 Transfer of permits**

7 On the application, in accordance with the regulations, of the
8 holder of a permit, the Minister may, in accordance with the
9 regulations, transfer the permit to another person.

10 **263 Suspension or cancellation of permits**

11 The Minister may, in accordance with the regulations:

- 12 (a) suspend a permit for a specified period; or
13 (b) cancel a permit.

14 **264 Fees**

15 Such fees as are prescribed (if any) are payable in respect of the
16 following:

- 17 (a) the grant or the transfer of a permit;
18 (b) the variation or revocation of a condition of a permit;
19 (c) the imposition of a further condition of a permit.

20 **Subdivision C—Miscellaneous**

21 **265 Minister may accredit plans of management**

22 The Minister may, by instrument in writing, accredit for the
23 purposes of this Division:

- 24 (a) a plan of management within the meaning of section 17 of
25 the *Fisheries Management Act 1991*; or

- 1 (b) a plan of management for a fishery made by a State or
2 self-governing Territory and that is in force in the State or
3 Territory;
4 if satisfied that:
5 (c) the plan requires persons engaged in fishing under the plan to
6 take all reasonable steps to ensure that members of listed
7 marine species are not killed or injured as a result of the
8 fishing; and
9 (d) the fishery to which the plan relates does not, or is not likely
10 to, adversely affect the conservation status of a listed marine
11 species or a population of that species.

12 **266 Regulations**

13 The regulations may:

- 14 (a) provide for the transportation, treatment and disposal of
15 members of listed marine species killed, injured or taken in
16 contravention of this Division; and
17 (b) provide for the methods or equipment by which members of
18 listed marine species may be killed or taken otherwise than in
19 contravention of this Division; and
20 (c) provide for the gathering and dissemination of information
21 relating to listed marine species; and
22 (d) the protection and conservation of listed marine species; and
23 (e) provide for any matter incidental to or connected with any of
24 the above paragraphs.

1

2 **Division 5—Plans**

3 **Subdivision A—Recovery plans and threat abatement plans**

4 **267 Recovery plans and threat abatement plans**

5 (1) Subject to this section, the Minister must, by instrument in writing,
6 make:

7 (a) a recovery plan for the purposes of the protection,
8 conservation and management of:

9 (i) a listed threatened species (other than a species that is
10 extinct or conservation dependent); or

11 (ii) a listed threatened ecological community; and

12 (b) a threat abatement plan for the purposes of reducing the
13 effect of a key threatening process.

14 (2) Subject to section 277, the Minister may, by instrument in writing,
15 adopt a plan that has been made by a State or a self-governing
16 Territory, or by an agency of a State or self-governing Territory
17 (whether or not the plan is in force in the State or self-governing
18 Territory) as a recovery plan or a threat abatement plan. The
19 Minister may adopt a plan with such modifications as are specified
20 in the instrument.

21 (3) A plan, as modified and adopted under subsection (2), has effect as
22 if the plan had been made by the Minister under subsection (1).

23 (4) The Minister must seek the co-operation of the States and
24 self-governing Territories in which:

25 (a) a listed threatened species (other than a species that is extinct
26 or conservation dependent) occurs; or

27 (b) a listed threatened ecological community occurs; or

28 (c) a key threatening process occurs;

29 with a view to making jointly with those States and Territories, or
30 agencies of those States or Territories, a joint recovery plan or

Section 268

- 1 threat abatement plan unless the species, community or process
2 occurs only in a Commonwealth area.
- 3 (5) The Minister must not make a recovery plan or threat abatement
4 plan under subsection (1) or (4) unless the plan meets the
5 requirements of section 270 or 271, as the case requires.
- 6 (6) Before making a recovery plan or a threat abatement plan under
7 subsection (1) or (4), the Minister must:
- 8 (a) consider the advice of the Scientific Committee given under
9 section 274; and
- 10 (b) consult about the plan in accordance with sections 275 and
11 276.
- 12 (7) A recovery plan or a threat abatement plan comes into force on the
13 day on which it is made or adopted, or on such later day as the
14 Minister specifies in writing.
- 15 (8) This section does not exclude or limit the concurrent operation of a
16 law of a State or a self-governing Territory.

17 **268 Compliance with recovery plans and threat abatement plans**

18 A Commonwealth agency must not take any action that
19 contravenes a recovery plan or a threat abatement plan.

20 **269 Implementing recovery and threat abatement plans**

- 21 (1) Subject to subsection (2), the Commonwealth must implement a
22 recovery plan or threat abatement plan to the extent to which it
23 applies in Commonwealth areas.
- 24 (2) If a recovery plan or a threat abatement plan applies outside
25 Commonwealth areas in a particular State or self-governing
26 Territory, the Commonwealth must seek the co-operation of the
27 State or Territory with a view to implementing the plan jointly with
28 the State or Territory to the extent to which the plan applies in the
29 State or Territory.

1 **270 Content of recovery plans**

- 2 (1) A recovery plan must provide for the research and management
3 actions necessary to stop the decline of, and support the recovery
4 of, the listed threatened species or listed threatened ecological
5 community concerned so that its chances of long-term survival in
6 nature are maximised.
- 7 (2) In particular, a recovery plan must:
- 8 (a) state the objectives to be achieved (for example, removing a
9 species or community from a list, or indefinite protection of
10 existing populations of a species or community); and
- 11 (b) state criteria against which achievement of the objectives is
12 to be measured (for example, a specified number and
13 distribution of viable populations of a species or community,
14 or the abatement of threats to a species or community); and
- 15 (c) specify the actions needed to achieve the objectives; and
- 16 (d) identify the habitats that are critical to the survival of the
17 species or community concerned and the actions needed to
18 protect those habitats; and
- 19 (e) identify any populations of the species or community
20 concerned that are under particular pressure of survival and
21 the actions needed to protect those populations; and
- 22 (f) state the estimated duration and cost of the recovery process;
23 and
- 24 (g) identify:
- 25 (i) interests that will be affected by the plan's
26 implementation; and
- 27 (ii) organisations or persons who will be involved in
28 evaluating the performance of the recovery plan; and
- 29 (h) specify any major benefits to native species or ecological
30 communities (other than those to which the plan relates) that
31 will be affected by the plan's implementation; and
- 32 (i) in the case of a plan for a listed threatened species that is also
33 a listed migratory species, a listed marine species or a species

Section 271

- 1 of cetacean—satisfy the requirements of a wildlife
2 conservation plan for that species; and
3 (j) meet prescribed criteria (if any) and contain provisions of a
4 prescribed kind (if any).
- 5 (3) In making a recovery plan, regard must be had to:
- 6 (a) the objects of this Act; and
7 (b) the most efficient and effective use of the resources that are
8 allocated for the conservation of species and ecological
9 communities; and
10 (c) minimising any significant adverse social and economic
11 impacts, consistently with the principles of ecologically
12 sustainable development; and
13 (d) meeting Australia's obligations under international
14 agreements between Australia and one or more countries
15 relevant to the species or ecological community to which the
16 plan relates.

17 **271 Content of threat abatement plans**

- 18 (1) A threat abatement plan must provide for the research,
19 management and other actions necessary to reduce the key
20 threatening process concerned to an acceptable level in order to
21 maximise the chances of the long-term survival in nature of native
22 species and ecological communities affected by the process.
- 23 (2) In particular, a threat abatement plan must:
- 24 (a) state the objectives to be achieved; and
25 (b) state criteria against which achievement of the objectives is
26 to be measured; and
27 (c) specify the actions needed to achieve the objectives; and
28 (d) state the estimated duration and cost of the threat abatement
29 process; and
30 (e) identify organisations or persons who will be involved in
31 evaluating the performance of the threat abatement plan; and

Section 272

- 1 (f) specify any major ecological matters (other than the species
2 or communities threatened by the key threatening process
3 that is the subject of the plan) that will be affected by the
4 plan's implementation; and
5 (g) meet prescribed criteria (if any) and contain provisions of a
6 prescribed kind (if any).
- 7 (3) In making a threat abatement plan, regard must be had to:
8 (a) the objects of this Act; and
9 (b) the most efficient and effective use of the resources that are
10 allocated for the conservation of species and ecological
11 communities; and
12 (c) minimising any significant adverse social and economic
13 impacts consistently with the principles of ecologically
14 sustainable development; and
15 (d) meeting Australia's obligations under international
16 agreements between Australia and one or more countries
17 relevant to the species or ecological community threatened
18 by the key threatening process that is the subject of the plan.

19 **272 Eradication of non-native species**

- 20 If:
21 (a) the actions specified under paragraph 270(2)(c) in a recovery
22 plan, or under paragraph 271(2)(c) in a threat abatement plan,
23 include the eradication of a non-native species; and
24 (b) the species is threatened in a country in which its native
25 habitat occurs;
26 the recovery plan, or threat abatement plan, must require the
27 Commonwealth to offer to provide stock of the species to that
28 country before the eradication proceeds.

29 **273 Deadlines for preparing plans**

- 30 (1) A recovery plan for a listed threatened species or listed threatened
31 ecological community that occurs only in Commonwealth areas
32 must be made:
-

- 1 (a) in the case of a native species listed in Schedule 1 to the
2 *Endangered Species Protection Act 1992*, for which a
3 recovery plan under that Act was not in force immediately
4 before the commencement of this Act—within the remainder
5 of the period allowed by section 36 of that Act for the
6 preparation of the plan for that species; or
7 (b) in the case of a listed threatened species (other than a native
8 species mentioned in paragraph (a)) in:
9 (i) the critically endangered category—within 2 years after
10 the species in question became included in that
11 category; or
12 (ii) the endangered category or the extinct in the wild
13 category—within 3 years after the species in question
14 became included in that category; or
15 (iii) the vulnerable category—within 5 years after the
16 species in question became included in that category; or
17 (c) in the case of an ecological community (if any) listed in
18 Schedule 2 to the *Endangered Species Protection Act 1992*,
19 for which a recovery plan under that Act was not in force
20 immediately before the commencement of this Act—within
21 the remainder of the period allowed by section 36 of that Act
22 for the preparation of the plan for that community; or
23 (d) in the case of a listed threatened ecological community (other
24 than a community mentioned in paragraph (c)) in:
25 (i) the critically endangered category—within 2 years after
26 the community in question became included in that
27 category; or
28 (ii) the endangered category—within 3 years after the
29 community in question became included in that
30 category; or
31 (iii) the vulnerable category—within 5 years after the
32 community in question became included in that
33 category.

Section 273

- 1 (2) A recovery plan for a listed threatened species or a listed
2 threatened ecological community that occurs in and outside a
3 Commonwealth area must be made:
- 4 (a) in the case of a listed threatened species in:
- 5 (i) the critically endangered category—within 2 years after
6 the species in question became included in that
7 category; or
- 8 (ii) the endangered category or the extinct in the wild
9 category—within 3 years after the species in question
10 became included in that category; or
- 11 (iii) the vulnerable category—within 5 years after the
12 species in question became included in that category; or
- 13 (b) in the case of a listed threatened ecological community in:
- 14 (i) the critically endangered category—within 2 years after
15 the community in question became included in that
16 category; or
- 17 (ii) the endangered category—within 3 years after the
18 community in question became included in that
19 category; or
- 20 (iii) the vulnerable category—within 5 years after the
21 community in question became included in that
22 category.
- 23 (3) A threat abatement plan for a key threatening process must be
24 made:
- 25 (a) in the case of a key threatening process listed in Schedule 3
26 to the *Endangered Species Protection Act 1992*, for which a
27 threat abatement plan under that Act was not in force
28 immediately before the commencement of this Act—within
29 the remainder of the period allowed by section 36 of that Act
30 for the preparation of the plan for that key threatening
31 process; or
- 32 (b) in any other case—within 3 years after the key threatening
33 process became listed.

1 **274 Scientific Committee to advise on plans**

2 (1) The Minister must obtain and consider the advice of the Scientific
3 Committee on:

- 4 (a) the content of recovery and threat abatement plans; and
5 (b) the times within which, and the order in which, such plans
6 should be made.

7 (2) In giving advice about a recovery plan, the Scientific Committee
8 must take into account the following matters:

- 9 (a) the degree of threat to the survival in nature of the species or
10 ecological community in question;
11 (b) the potential for the species or community to recover;
12 (c) the genetic distinctiveness of the species or community;
13 (d) the importance of the species or community to the
14 ecosystem;
15 (e) the value to humanity of the species or community;
16 (f) the efficient and effective use of the resources allocated to
17 the conservation of species and ecological communities.

18 (3) In giving advice about a threat abatement plan, the Scientific
19 Committee must take into account the following matters:

- 20 (a) the degree of threat that the key threatening process in
21 question poses to the survival in nature of species and
22 ecological communities;
23 (b) the potential of species and ecological communities so
24 threatened to recover;
25 (c) the efficient and effective use of the resources allocated to
26 the conservation of species and ecological communities.

27 **275 Consultation on plans**

28 (1) Before making a recovery plan or threat abatement plan under
29 subsection 267(1) or (4), the Minister must:

- 30 (a) take reasonable steps to ensure that copies of the proposed
31 plan are available for purchase, for a reasonable price, at

Section 276

- 1 prescribed places in each State and self-governing territory;
2 and
3 (b) give a copy of it, together with a notice of a kind referred to
4 in subsection (2), to the Scientific Committee; and
5 (c) cause the notice to be published:
6 (i) in the *Gazette*; and
7 (ii) in a daily newspaper that circulates generally in each
8 State, and self-governing Territory, in which the
9 relevant listed threatened native species, listed
10 threatened ecological community or key threatening
11 process occurs; and
12 (iii) in any other way required by the regulations (if any).
- 13 (2) The notice must:
14 (a) specify the places where copies of the proposed plan may be
15 purchased; and
16 (b) invite persons to make written comments about the proposed
17 plan; and
18 (c) specify:
19 (i) an address for lodgment of comments; and
20 (ii) a day by which comments must be made.
- 21 (3) The day specified must not be a day occurring within 3 months
22 after the notice is published in the *Gazette*.

276 Consideration of comments

- 24 The Minister:
25 (a) must, in accordance with the regulations (if any), consider all
26 comments on a proposed recovery plan or threat abatement
27 plan made in response to an invitation under section 275; and
28 (b) may revise the plan to take account of those comments.

1 **277 Adoption of State plans**

- 2 (1) The Minister must not adopt a plan as a recovery plan or a threat
3 abatement plan under subsection 267(2) unless:
4 (a) the Minister is satisfied that an appropriate level of
5 consultation has been undertaken in making the plan; and
6 (b) the plan meets the requirements of section 270 or 271, as the
7 case requires.
- 8 (2) Before adopting a plan, the Minister must obtain and consider
9 advice from the Scientific Committee on the content of the plan.

10 **278 Publication, review and variation of plans**

- 11 (1) As soon as practicable after the Minister makes or adopts a
12 recovery plan or a threat abatement plan under section 267, the
13 Minister must:
14 (a) make copies of the plan available for purchase, for a
15 reasonable price, at a prescribed place in each State and
16 self-governing Territory; and
17 (b) give notice of the making or adopting of each such plan; and
18 (c) publish the notice:
19 (i) in the *Gazette*; and
20 (ii) in a daily newspaper that circulates generally in each
21 State, and self-governing Territory; and
22 (iii) in any other way required by the regulations (if any).
- 23 (2) The notice must:
24 (a) state that the Minister has made or adopted the plan; and
25 (b) specify the day on which the plan comes into force; and
26 (c) specify the places where copies of the plan may be
27 purchased.

1 **279 Variation of plans by the Minister**

- 2 (1) The Minister may, at any time, review a recovery plan or threat
3 abatement plan that has been made or adopted under section 267
4 and consider whether a variation of it is necessary.
- 5 (2) Each plan must be reviewed by the Minister at intervals of not
6 longer than 5 years.
- 7 (3) If the Minister considers that a variation of a plan is necessary, the
8 Minister may, subject to subsections (4), (5), (6) and (7), vary the
9 plan.
- 10 (4) The Minister must not vary a plan, unless the plan, as so varied,
11 continues to meet the requirements of section 270 or 271, as the
12 case requires.
- 13 (5) Before varying a plan, the Minister must obtain and consider
14 advice from the Scientific Committee on the content of the
15 variation.
- 16 (6) If the Minister has made a plan jointly with, or adopted a plan that
17 has been made by, a State or self-governing Territory, or an agency
18 of a State or self-governing Territory, the Minister must seek the
19 co-operation of that State or Territory, or that agency, with a view
20 to varying the plan.
- 21 (7) Sections 275, 276 and 278 apply to the variation of a plan in the
22 same way that those sections apply to the making of a recovery
23 plan or threat abatement plan.

24 **280 Variation by a State or Territory of joint plans and plans**
25 **adopted by the Minister**

- 26 (1) If a State or self-governing Territory varies a plan that:
27 (a) the Minister has made jointly with the State or self-governing
28 Territory, or an agency of the State or Territory; or
29 (b) has been adopted by the Minister as a recovery plan or a
30 threat abatement plan;

Section 281

- 1 the variation is of no effect for the purposes of this Act unless it is
2 approved by the Minister.
- 3 (2) Before approving a variation, the Minister must obtain and
4 consider advice from the Scientific Committee on the content of
5 the variation.
- 6 (3) The Minister must not approve a variation unless satisfied that:
7 (a) an appropriate level of consultation was undertaken in
8 varying the plan; and
9 (b) the plan, as so varied, continues to meet the requirements of
10 section 270 or 271, as the case requires.
- 11 (4) If the Minister approves a variation of a plan, the plan has effect as
12 so varied on and after the date of the approval, or such later date as
13 the Minister determines in writing.
- 14 (5) Section 278 applies to the variation of a plan in the same way that
15 it applies to the making of a recovery plan or threat abatement
16 plan.

17 **281 Commonwealth assistance**

- 18 (1) The Commonwealth may give to a State or self-governing
19 Territory, or to an agency of a State or a self-governing Territory,
20 financial assistance, and any other assistance, to make or
21 implement a recovery plan or a threat abatement plan.
- 22 (2) The Commonwealth may give to a person (other than a State or a
23 self-governing Territory, or an agency of a State or Territory)
24 financial assistance, and any other assistance, to implement a
25 recovery plan or a threat abatement plan.
- 26 (3) The giving of assistance may be made subject to such conditions as
27 the Minister thinks fit. The Minister is to have regard to the advice
28 of the Scientific Committee under section 282 before determining
29 those conditions.

Section 282

1 **282 Scientific Committee to advise on assistance**

2 (1) The Scientific Committee is to advise the Minister on the
3 conditions (if any) to which the giving of assistance under section
4 281 should be subject.

5 (2) In giving advice about assistance for making or implementing a
6 recovery plan, the Scientific Committee must take into account the
7 following matters:

8 (a) the degree of threat to the survival in nature of the species or
9 ecological community in question;

10 (b) the potential for the species or community to recover;

11 (c) the genetic distinctiveness of the species or community;

12 (d) the importance of the species or community to the
13 ecosystem;

14 (e) the value to humanity of the species or community;

15 (f) the efficient and effective use of the resources allocated to
16 the conservation of species and ecological communities.

17 (3) In giving advice about assistance for making or implementing
18 threat abatement plan, the Scientific Committee must take into
19 account the following matters:

20 (a) the degree of threat that the key threatening process in
21 question poses to the survival in nature of species and
22 ecological communities;

23 (b) the potential of species and ecological communities so
24 threatened to recover;

25 (c) the efficient and effective use of the resources allocated to
26 the conservation of species and ecological communities.

27 **283 Plans may cover more than one species etc.**

28 (1) A recovery plan made or adopted under this Subdivision may deal
29 with one or more listed threatened species and/or one or more
30 listed ecological communities.

- 1 (2) A threat abatement plan made or adopted under this Subdivision
2 may deal with one or more key threatening processes.

3 **284 Reports on preparation and implementation of plans**

4 The Secretary must include in each annual report a report on the
5 making and adoption under section 267 of each recovery plan and
6 threat abatement plan during the year to which the report relates.

7 **Subdivision B—Wildlife conservation plans**

8 **285 Wildlife conservation plans**

- 9 (1) Subject to this section, the Minister may make, by instrument in
10 writing, and implement a wildlife conservation plan for the
11 purposes of the protection, conservation and management of the
12 following:
- 13 (a) a listed migratory species that occurs in Australia or an
14 external Territory;
 - 15 (b) a listed marine species that occurs in Australia or an external
16 Territory;
 - 17 (c) a species of cetacean that occurs in the Australian Whale
18 Sanctuary.
- 19 (2) The Minister must not make a plan for a listed migratory species, a
20 listed marine species or a species of cetacean that is a listed
21 threatened species.
- 22 (3) Subject to section 292, the Minister may, by instrument in writing,
23 adopt a plan that has been made by a State or a self-governing
24 Territory, or by an agency of a State or self-governing Territory, as
25 a wildlife conservation plan. The Minister may adopt a plan with
26 such modifications as are specified in the instrument.
- 27 (4) A plan, as modified and adopted under subsection (2), has effect as
28 if the plan had been made by the Minister under subsection (1).

Section 286

- 1 (5) The Minister must seek the co-operation of the States and
2 self-governing Territories in which:
3 (a) a listed migratory species occurs; or
4 (b) a listed marine species occurs; or
5 (c) a species of cetacean occurs;
6 with a view to making and implementing jointly with those States
7 and Territories, or agencies of those States or Territories, a joint
8 wildlife conservation plan unless the species occurs only in a
9 Commonwealth area.
- 10 (6) Before making a wildlife conservation plan under subsection (1) or
11 (5), the Minister must:
12 (a) consider the advice of the Scientific Committee given under
13 section 289; and
14 (b) consult about the plan in accordance with sections 290 and
15 291.
- 16 (7) A wildlife conservation plan comes into force on the day on which
17 it is made or adopted, or on such later day as the Minister specifies
18 in writing.
- 19 (8) This section does not exclude or limit the concurrent operation of a
20 law of a State or a self-governing Territory.

21 **286 Acting in accordance with wildlife conservation plans**

22 A Commonwealth agency must take all reasonable steps to act in
23 accordance with a wildlife conservation plan.

24 **287 Content of wildlife conservation plans**

- 25 (1) A wildlife conservation plan must provide for the research and
26 management actions necessary to support survival of the migratory
27 species, marine species or species of cetacean concerned.
- 28 (2) In particular, a wildlife conservation plan must:
29 (a) state the objectives to be achieved; and

- 1 (b) state criteria against which achievement of the objectives is
2 to be measured; and
3 (c) specify the actions needed to achieve the objectives; and
4 (d) identify the habitats of the species concerned and the actions
5 needed to protect those habitats; and
6 (e) identify:
7 (i) interests that will be affected by the plan's
8 implementation; and
9 (ii) organisations or persons who will be involved in
10 evaluating the performance of the plan; and
11 (f) specify any major benefits to migratory species, marine
12 species or species of cetacean (other than those to which the
13 plan relates) that will be affected by the plan's
14 implementation; and
15 (g) meet prescribed criteria (if any) and contain provisions of a
16 prescribed kind (if any).
- 17 (3) In making a wildlife conservation plan, regard must be had to:
18 (a) the objects of this Act; and
19 (b) the most efficient and effective use of the resources that are
20 allocated for the conservation of migratory species, marine
21 species and species of cetacean; and
22 (c) minimising any significant adverse social and economic
23 impacts, consistently with the principles of ecologically
24 sustainable development; and
25 (d) meeting Australia's obligations under international
26 agreements between Australia and one or more countries
27 relevant to the migratory species, marine species or species
28 of cetacean to which the plan relates.

29 **288 Eradication of non-native species**

- 30 If:
31 (a) the actions specified under section 287 in a wildlife
32 conservation plan include the eradication of a non-native
33 species; and
-

Section 289

- 1 (b) the species is threatened in a country in which its native
2 habitat occurs;
3 the wildlife conservation plan must require the Commonwealth to
4 offer to provide stock of the species to that country before the
5 eradication proceeds.

6 **289 Scientific Committee to advise on scheduling of plans**

- 7 (1) The Minister may seek advice from the Scientific Committee on
8 the need for wildlife conservation plans and the order in which
9 they should be made.
10 (2) In giving advice under subsection (1), the Scientific Committee
11 must take into account the resources available for making plans.
12 (3) Before making a plan, the Minister must obtain and consider
13 advice from the Scientific Committee on the content of the plan.

14 **290 Consultation on plans**

- 15 (1) Before making a wildlife conservation plan under subsection
16 285(1) or (5), the Minister must:
17 (a) take reasonable steps to ensure that copies of the proposed
18 plan are available for purchase, for a reasonable price, at
19 prescribed places in each State and self-governing Territory;
20 and
21 (b) give a copy of it, together with a notice of a kind referred to
22 in subsection (2), to the Scientific Committee; and
23 (c) cause the notice to be published:
24 (i) in the *Gazette*; and
25 (ii) in a daily newspaper that circulates generally in each
26 State, and self-governing Territory; and
27 (iii) in any other way required by the regulations (if any).
28 (2) The notice must:
29 (a) specify the places where copies of the proposed plan may be
30 purchased; and
-

Section 291

- 1 (b) invite persons to make written comments about the proposed
2 plan; and
3 (c) specify:
4 (i) an address for lodgment of comments; and
5 (ii) a day by which comments must be made.
6 (3) The day specified must not be a day occurring within 3 months
7 after the notice is published in the *Gazette*.

8 **291 Consideration of comments**

- 9 The Minister:
10 (a) must, in accordance with the regulations (if any), consider all
11 comments on a proposed wildlife conservation plan made in
12 response to an invitation under section 290; and
13 (b) may revise the plan to take account of those comments.

14 **292 Adoption of State plans**

- 15 (1) The Minister must not adopt a plan as a wildlife conservation plan
16 under subsection 285(3) unless:
17 (a) the Minister is satisfied that an appropriate level of
18 consultation has been undertaken in making the plan; and
19 (b) the plan meets the requirements of section 287.
20 (2) Before adopting a plan, the Minister must obtain and consider
21 advice from the Scientific Committee on the content of the plan.

22 **293 Publication, review and variation of plans**

- 23 (1) As soon as practicable after the Minister makes or adopts a wildlife
24 conservation plan under section 285, the Minister must:
25 (a) make copies of the plan available for purchase, for a
26 reasonable price, at a prescribed place in each State and
27 self-governing Territory; and
28 (b) give notice of the making or adoption of each such plan; and
29 (c) publish the notice:
-

Section 294

- 1 (i) in the *Gazette*; and
2 (ii) in a daily newspaper that circulates generally in each
3 State, and self-governing Territory; and
4 (iii) in any other way required by the regulations (if any).
- 5 (2) The notice must:
6 (a) state that the Minister has made or adopted the plan; and
7 (b) specify the day on which the plan comes into force; and
8 (c) specify the places where copies of the plan may be
9 purchased.

10 **294 Variation of plans by the Minister**

- 11 (1) The Minister may, at any time, review a wildlife conservation plan
12 that has been made or adopted under section 285 and consider
13 whether a variation of it is necessary.
- 14 (2) Each plan must be reviewed by the Minister at intervals of not
15 longer than 5 years.
- 16 (3) If the Minister considers that a variation of a plan is necessary, the
17 Minister may, subject to subsections (4), (5), (6) and (7) vary the
18 plan.
- 19 (4) The Minister must not vary a plan, unless the plan, as so varied,
20 continues to meet the requirements of section 287.
- 21 (5) Before varying a plan, the Minister must obtain and consider
22 advice from the Scientific Committee on the content of the
23 variation.
- 24 (6) If the Minister has made a plan jointly with, or adopted a plan that
25 has been made by, a State or self-governing Territory, or an agency
26 of a State or self-governing Territory, the Minister must seek the
27 co-operation of that State or Territory, or that agency, with a view
28 to varying the plan.

- 1 (7) Sections 290, 291 and 293 apply to the variation of a plan in the
2 same way that those sections apply to the making of a wildlife
3 conservation plan.

4 **295 Variation by a State or Territory of joint plans and plans**
5 **adopted by the Minister**

- 6 (1) If a State or self-governing Territory varies a plan that:
7 (a) the Minister has made jointly with the State or self-governing
8 Territory, or an agency of the State or Territory; or
9 (b) has been adopted by the Minister as a wildlife conservation
10 plan;
11 the variation is of no effect for the purposes of this Act unless it is
12 approved by the Minister.
- 13 (2) Before approving a variation, the Minister must obtain and
14 consider advice from the Scientific Committee on the content of
15 the variation.
- 16 (3) The Minister must not approve a variation under subsection (1)
17 unless satisfied:
18 (a) an appropriate level of consultation was undertaken in
19 varying the plan; and
20 (b) the plan, as so varied, continues to meet the requirements of
21 section 287.
- 22 (4) If the Minister approves a variation of a plan, the plan has effect as
23 so varied on and after the date of the approval, or such later date as
24 the Minister determines in writing.
- 25 (5) Section 293 applies to the variation of a plan in the same way that
26 it applies to the making of a wildlife conservation plan.

27 **296 Commonwealth assistance**

- 28 (1) The Commonwealth may give to a State or self-governing
29 Territory, or to an agency of a State or a self-governing Territory,
-

Section 297

1 financial assistance, and any other assistance, to make a wildlife
2 conservation plan.

3 (2) The Commonwealth may give to a person (other than a State or a
4 self-governing Territory, or an agency of a State or Territory)
5 financial assistance, and any other assistance, to implement a
6 wildlife conservation plan.

7 (3) The giving of assistance may be made subject to such conditions as
8 the Minister thinks fit.

9 **297 Plans may cover more than one species etc.**

10 A wildlife conservation plan made or adopted under this
11 Subdivision may deal with all or any of the following:

- 12 (a) one or more listed migratory species;
13 (b) one or more listed marine species;
14 (c) one or more species of cetacean.

15 **298 Reports on preparation and implementation of plans**

16 The Secretary must include in each annual report a report on the
17 making and adoption under section 285 of each wildlife
18 conservation plan during the year to which the report relates.

19 **Subdivision C—Miscellaneous**

20 **299 Wildlife conservation plans cease to have effect**

21 If:

- 22 (a) a wildlife conservation plan is in force for all or any of the
23 following:
24 (i) a listed migratory species;
25 (ii) a listed marine species;
26 (iii) a species of cetacean; and
27 (b) the species becomes a listed threatened species;

Section 300

1 the wildlife conservation plan ceases to have effect in relation to
2 the species on and from the day on which a recovery plan takes
3 effect for the species.

4 **300 Document may contain more than one plan**

5 (1) All or any of the plans made under this Division may be included
6 in the same document.

7 (2) All or any of the plans adopted under this Division may be
8 included in the same instrument of adoption.

Section 301

1

2 **Division 6—Access to biological resources**

3 **301 Control of access to biological resources**

4 (1) The regulations may provide for the control of access to biological
5 resources in Commonwealth areas.

6 (2) Without limiting subsection (1), the regulations may contain
7 provisions about all or any of the following:

8 (a) the equitable sharing of the benefits arising from the use of
9 biological resources in Commonwealth areas;

10 (b) the facilitation of access to such resources;

11 (c) the right to deny access to such resources;

12 (d) the granting of access to such resources and the terms and
13 conditions of such access.

1

2 **Division 7—Aid for conservation of species in foreign**
3 **countries**

4 **302 Aid for conservation of species in foreign countries**

5 On behalf of the Commonwealth, the Minister may give financial
6 assistance to the governments of foreign countries and
7 organisations in foreign countries to help the recovery and
8 conservation, in those countries, of species covered by
9 international agreements to which Australia is a party.

Chapter 5 Conservation of biodiversity

Part 13 Species and communities

Division 8 Miscellaneous

Section 303

1

2 **Division 8—Miscellaneous**

3

4 **303 Regulations**

5

The regulations may make provision for the conservation of
biodiversity in Commonwealth areas.

6

1
2 **Part 14—Conservation agreements**
3

4 **304 Object of this Part**

5 The object of this Part is to provide for:

- 6 (a) conservation agreements between the Commonwealth and
7 persons related to the protection and conservation of
8 biodiversity; and
9 (b) the effect of conservation agreements; and
10 (c) the publication of conservation agreements.

11 Conservation agreements are agreements whose primary object is
12 to enhance the conservation of biodiversity. They may relate to
13 private or public land, or to marine areas.

14 **305 Minister may enter into conservation agreements**

- 15 (1) Subject to subsection (2) the Minister may, on behalf of the
16 Commonwealth, enter into an agreement, expressed to be a
17 conservation agreement, with a person for the protection and
18 conservation of biodiversity in the Australian jurisdiction,
19 including:
20 (a) the protection, conservation and management of any listed
21 species or ecological communities, or their habitats; and
22 (b) the abatement of processes, and the mitigation or avoidance
23 of actions that might adversely affect biodiversity.
- 24 (2) The Minister must not enter into a conservation agreement unless
25 satisfied that:
26 (a) the proposed agreement will result in a net benefit to the
27 conservation of biodiversity; and
28 (b) the proposed agreement is not inconsistent with a recovery
29 plan, threat abatement plan or wildlife conservation plan.
- 30 (3) For the purposes of paragraph (2)(a), in deciding whether a
31 proposed agreement will result in a net benefit to biodiversity
-

Section 306

1 conservation, the Minister must have regard to the prescribed
2 matters (if any).

3 **306 Content of conservation agreements**

- 4 (1) Without limiting section 305, a conservation agreement may
5 provide, for example, for all or any of the following:
- 6 (a) activities that promote the protection and conservation of
7 biodiversity;
 - 8 (b) controlling or prohibiting, in any place covered by the
9 agreement, actions or processes that might adversely affect
10 the species, ecological communities, habitats or potential
11 habitats covered by the agreement;
 - 12 (c) requiring a person bound by the agreement not to obstruct
13 access by a person authorised under the agreement to places
14 covered by the agreement for the purpose of monitoring
15 compliance with the agreement;
 - 16 (d) requiring a person bound by the agreement to give such an
17 authorised person information requested by the authorised
18 person that is in the first-mentioned person's control and is
19 relevant to compliance with the agreement;
 - 20 (e) requiring the Commonwealth to provide financial, technical
21 or other assistance to a person bound by the agreement;
 - 22 (f) declaring that specified actions taken in a specified manner,
23 or in other specified circumstances, do not require approval
24 under Part 9 for the purpose of a specified provision of
25 Part 3;
 - 26 (g) the commencement and duration of the agreement.
- 27 (2) Without limiting section 305 or subsection (1) of this section, a
28 conservation agreement entered into with the owner of a place may
29 provide, for example, for all or any of the following:
- 30 (a) requiring the owner to carry out specified activities, or to do
31 specified things, that promote the conservation of
32 biodiversity;

Section 307

- 1 (b) restricting the use of the place, or requiring the owner to
2 refrain from, control or refuse to permit, actions or processes
3 that may adversely affect the species, ecological
4 communities, habitats or potential habitats covered by the
5 agreement;
6 (c) requiring the owner to permit access to the place by specified
7 persons;
8 (d) requiring the owner to contribute towards costs incurred in
9 implementing the agreement;
10 (e) specifying the manner in which any money paid to the owner
11 under the agreement is to be applied by the owner;
12 (f) requiring the owner to repay to the Commonwealth any
13 money paid to the owner under the agreement if the owner
14 commits a specified breach of the agreement or in other
15 specified circumstances;
16 (g) providing for any other matter relating to the conservation or
17 enhancement of the place, including the preparation and
18 implementation of a plan of management for the place.

19 **307 Conservation agreements to be legally binding**

20 A conservation agreement is legally binding on:

- 21 (a) the Commonwealth; and
22 (b) the person or persons with whom the Minister entered into
23 the agreement on behalf of the Commonwealth; and
24 (c) anyone else who is a successor to the whole or any part of
25 any interest that a person mentioned in paragraph (b) had,
26 when the agreement was entered into, in any place covered
27 by the agreement.

28 **308 Variation and termination of conservation agreements**

- 29 (1) A conservation agreement may be varied by a variation agreement
30 entered into by the Minister, on behalf of the Commonwealth, and
31 the other party or parties to the conservation agreement.

Section 309

- 1 (2) Sections 305 and 306 apply in relation to variation agreements in
2 the same way as they apply in relation to conservation agreements.
- 3 (3) A conservation agreement may be terminated:
4 (a) by agreement between the Minister, on behalf of the
5 Commonwealth, and the other party or parties to the
6 agreement; or
7 (b) in such other manner, or in such circumstances (if any), as
8 the agreement specifies.
- 9 (4) If the Minister is satisfied that a conservation agreement is not
10 capable of achieving its purpose, the Minister may, by order
11 published in the *Gazette*, terminate the agreement or vary it in any
12 way the Minister thinks necessary to ensure it becomes capable of
13 achieving its purpose.
- 14 (5) The Minister may make an order under subsection (4) in relation to
15 a conservation agreement without the agreement of the other party
16 or parties to the agreement.
- 17 (6) The Minister must cause a copy of an order to be laid before each
18 House of the Parliament within the prescribed period after the
19 publication of the order.
- 20 (7) If a conservation agreement is varied by an order, the other party or
21 parties to the agreement may, by written notice given to the
22 Minister, terminate the agreement.
- 23 (8) If a conservation agreement is terminated or varied by an order, the
24 other party or parties to the agreement are not entitled to any
25 compensation in respect of the termination or variation.
- 26 Note: See Parts 17 and 18 for remedies for breach of conservation
27 agreements.

309 Publication of conservation agreements

- 28
29 (1) As soon as practicable after a conservation agreement has been
30 entered into or varied, other than by an order under subsection
31 308(4), the Minister must:
-

Section 310

- 1 (a) take reasonable steps to ensure that copies of the agreement
2 or variation are available for purchase, for a reasonable price,
3 at a prescribed place in each State and self-governing
4 Territory; and
5 (b) cause a notice of the agreement or variation to be published:
6 (i) in the *Gazette*; and
7 (ii) in any other way required by the regulations.
- 8 (2) The notice must:
9 (a) state that the agreement or variation has been entered into or
10 made; and
11 (b) specify the places where copies of the agreement or variation
12 may be purchased.
- 13 (3) Subsection (1) does not apply in relation to a conservation
14 agreement, or a variation of such an agreement, or any part of such
15 an agreement or variation, if the Minister is satisfied that disclosure
16 of the agreement or variation, or the part of the agreement or
17 variation, as the case may be, would:
18 (a) result in harm being done to components of biodiversity; or
19 (b) disclose matters that are commercial-in-confidence.

20 **310 List of conservation agreements**

- 21 The Minister must:
22 (a) maintain an up-to-date list of conservation agreements that
23 are in force; and
24 (b) take reasonable steps to ensure that copies of the list are
25 available for purchase, for a reasonable price, at a prescribed
26 place in each State and self-governing Territory.

27 **311 Commonwealth, State and Territory laws**

- 28 (1) A provision of a conservation agreement has no effect to the extent
29 (if any) to which it is inconsistent with a law of the
30 Commonwealth, or of a State or Territory.

Section 312

1 (2) For the purposes of subsection (1), a provision of a conservation
2 agreement is not taken to be inconsistent with a law of the
3 Commonwealth, or of a State or Territory, if both the provision and
4 the law are capable of being complied with.

5 **312 Minister must not give preference**

6 The Minister must not, in exercising powers on behalf of the
7 Commonwealth under this Part, give preference to one State or any
8 part thereof within the meaning of section 99 of the Constitution.

1

2 **Part 15—Protected areas**

3 **Division 1—Managing World Heritage properties**

4 **Subdivision A—Simplified outline of this Division**

5 **313 Simplified outline of this Division**

6

The following is a simplified outline of this Division:

7

The Commonwealth may submit a property for inclusion in the World Heritage List only after seeking the agreement of relevant States, self-governing Territories and land-holders.

8

9

10

The Minister must make plans for managing properties on the World Heritage List that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

11

12

13

14

The Commonwealth must try to prepare and implement management plans for other properties on the World Heritage List, in co-operation with the relevant States and self-governing Territories.

15

16

17

18

The Commonwealth and Commonwealth agencies have duties relating to World Heritage properties in States and Territories.

19

20

The Commonwealth can provide assistance for the protection or conservation of declared World Heritage properties.

21

22

Note: Section 12 prohibits an action that has a significant impact on the world heritage values of a declared World Heritage property, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

23

24

25

Section 314

1 **Subdivision B—Seeking agreement on World Heritage listing**

2 **314 Special provisions relating to World Heritage nominations**

3 (1) The Commonwealth may submit to the World Heritage Committee
4 for inclusion in the World Heritage List a property containing an
5 area owned or occupied by another person only if the Minister is
6 satisfied that the Commonwealth has used its best endeavours to
7 reach agreement with the other person on:

8 (a) the proposed submission of the property (so far as it relates to
9 the area); and

10 (b) management arrangements for the property (so far as they
11 relate to the area).

12 (2) The Commonwealth may submit to the World Heritage Committee
13 for inclusion in the World Heritage List a property in a State or
14 self-governing Territory only if the Minister is satisfied that the
15 Commonwealth has used its best endeavours to reach agreement
16 with the State or Territory on:

17 (a) the proposed submission of the property; and

18 (b) management arrangements for the property.

19 (3) A failure to comply with this section does not affect the submission
20 of a property to the World Heritage Committee for inclusion in the
21 World Heritage List or the status of a property as a declared World
22 Heritage property.

23 **Subdivision C—Notice of submission of property for listing**

24 **315 Minister must give notice of submission of property for listing**
25 **etc.**

26 (1) The Minister must give notice in the *Gazette* and in the way (if
27 any) prescribed by the regulations of any of the following events as
28 soon as practicable after the event occurs:

29 (a) the Commonwealth submits a property to the World Heritage
30 Committee for inclusion in the World Heritage List;

- 1 (b) the Commonwealth extends the boundaries of a property
2 submitted to the World Heritage Committee for inclusion in
3 the World Heritage List;
4 (c) the Commonwealth restricts the boundaries of a property
5 submitted to the World Heritage Committee for inclusion in
6 the World Heritage List;
7 (d) the Commonwealth withdraws the submission of a property
8 for inclusion in the World Heritage List;
9 (e) a property submitted by the Commonwealth is included in
10 the World Heritage List;
11 (f) all or part of a property is removed from the World Heritage
12 List.
- 13 (2) The notice must specify the area included in, or excluded or
14 deleted from, the submission or World Heritage List as a result of
15 the event.
- 16 (3) A failure to comply with this section does not affect the status of
17 an area as a declared World Heritage property.

18 **Subdivision D—Plans for listed World Heritage properties in**
19 **Commonwealth areas**

20 **316 Making plans**

21 *Minister must make plan*

- 22 (1) The Minister must make a written plan for managing a property
23 that is included in the World Heritage List and is entirely within
24 one or more Commonwealth areas. The Minister must do so as
25 soon as practicable after the property:
26 (a) is included in the World Heritage List; or
27 (b) becomes entirely within one or more Commonwealth areas.

Section 316

1 *Amending and replacing plan*

2 (2) The Minister may make a written plan amending, or revoking and
3 replacing, a plan made under subsection (1) or this subsection.

4 *Requirements for plan*

5 (3) A plan must not be inconsistent with:
6 (a) Australia's obligations under the World Heritage
7 Convention; or
8 (b) any Australian World Heritage management principles.

9 Note: Section 323 explains what Australian World Heritage management
10 principles are.

11 *Ensuring plans reflect current management principles*

12 (4) If the Australian World Heritage management principles change so
13 that a plan (the *earlier plan*) is inconsistent with them, the Minister
14 must make another plan:
15 (a) amending the earlier plan so it is not inconsistent with them;
16 or
17 (b) revoking and replacing the earlier plan.

18 *Plan may be in same document as another plan*

19 (5) To avoid doubt, a plan under this section for a property may be in
20 the same document as:
21 (a) a plan under this section for another property; or
22 (b) a plan that this Act or another law of the Commonwealth
23 requires or permits to be prepared.

24 *Commonwealth reserves*

25 (6) Despite subsections (1) and (2), the Minister may not make a plan
26 for so much of a property as is in a Commonwealth reserve.

27 Note: A management plan must be prepared under Division 4 for a
28 Commonwealth reserve, taking account of Australia's obligations
29 under the World Heritage Convention.

1 *Heard Island and McDonald Islands*

2 (7) Despite subsections (1) and (2), the Minister may not make a plan
3 for so much of a property as is in the Territory of Heard Island and
4 McDonald Islands and covered by a plan:

5 (a) that is in operation under the *Environment Protection and*
6 *Management Ordinance 1987* of that Territory; and

7 (b) that the Minister is satisfied is not inconsistent with:

8 (i) Australia's obligations under the World Heritage
9 Convention; or

10 (ii) any Australian World Heritage management principles.

11 **317 Notice of plans**

12 The Minister must give notice of the making of a plan under
13 section 316, in accordance with the regulations.

14 **318 Compliance with plans**

15 The Commonwealth or a Commonwealth agency must not
16 contravene a plan made by the Minister under section 316.

17 **319 Review of plans every 5 years**

18 (1) The Minister must cause a review of a plan made under section 316
19 to be carried out at least once in each period of 5 years after the
20 plan is made.

21 (2) The review must consider whether the plan is consistent with the
22 Australian World Heritage management principles (if any) in force
23 at the time.

24 Note: Section 323 explains what Australian World Heritage management
25 principles are.

Section 320

1 **Subdivision E—Managing World Heritage properties in States**
2 **and self-governing Territories**

3 **320 Application**

4 This Subdivision applies in relation to a property that:

5 (a) is:

6 (i) in a State; or

7 (ii) in a self-governing Territory; or

8 (iii) on, over or under the seabed vested in a State by the
9 *Coastal Waters (State Title) Act 1980* or in the Northern
10 Territory by the *Coastal Waters (Northern Territory*
11 *Title) Act 1980*; and

12 (b) is not entirely within one or more Commonwealth areas.

13 **321 Co-operating to prepare and implement plans**

14 (1) This section applies in relation to a property that is included in the
15 World Heritage List.

16 (2) The Commonwealth must use its best endeavours to ensure a plan
17 for managing the property in a way that is not inconsistent with
18 Australia's obligations under the World Heritage Convention or
19 any Australian World Heritage management principles is prepared
20 and implemented in co-operation with the State or Territory.

21 Note: The Commonwealth and the State or Territory could make a bilateral
22 agreement adopting the plan and providing for its implementation.

23 **322 Commonwealth responsibilities**

24 (1) This section applies in relation to a property that is a declared
25 World Heritage property.

26 (2) The Commonwealth and each Commonwealth agency must take all
27 reasonable steps to ensure it exercises its powers and performs its
28 functions in relation to the property in a way that is not inconsistent
29 with:

- 1 (a) the World Heritage Convention; and
2 (b) any Australian World Heritage management principles; and
3 (c) if the property is on the World Heritage List and a plan for
4 managing the property has been prepared as described in
5 section 321—that plan.

6 **Subdivision F—Australian World Heritage management**
7 **principles**

8 **323 Australian World Heritage management principles**

- 9 (1) The *Australian World Heritage management principles* are the
10 principles (if any) prescribed by the regulations for management of
11 natural heritage and cultural heritage.
- 12 (2) Before the Governor-General makes regulations prescribing
13 principles, the Minister must be satisfied that the principles to be
14 prescribed are consistent with Australia’s obligations under the
15 World Heritage Convention.

16 **Subdivision G—Assistance for protecting World Heritage**
17 **properties**

18 **324 Commonwealth assistance for protecting declared World**
19 **Heritage properties**

- 20 (1) The Commonwealth may give financial or other assistance for the
21 protection or conservation of a declared World Heritage property
22 to:
23 (a) a State or self-governing Territory in which the property
24 occurs; or
25 (b) any other person.
- 26 (2) The giving of assistance may be made subject to such conditions as
27 the Minister thinks fit.

Section 325

1

2 **Division 2—Managing wetlands of international**
3 **importance**

4 **Subdivision A—Simplified outline of this Division**

5 **325 Simplified outline of this Division**

6 The following is a simplified outline of this Division:

7
8
9
10

The Commonwealth may designate a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention only after seeking the agreement of relevant States, self-governing Territories and land-holders.

11
12
13
14

The Minister must make plans for managing wetlands listed under the Ramsar Convention that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

15
16
17
18

The Commonwealth must try to prepare and implement management plans for other wetlands listed under the Ramsar Convention, in co-operation with the relevant States and self-governing Territories.

19
20

The Commonwealth and Commonwealth agencies have duties relating to declared Ramsar wetlands in States and Territories.

21
22

The Commonwealth can provide assistance for the protection or conservation of declared Ramsar wetlands.

23
24
25
26

Note: Section 16 prohibits an action that has a significant impact on an internationally important wetland, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

1 **Subdivision B—Seeking agreement on Ramsar designation**

2 **326 Commonwealth must seek agreement before designation**

3 (1) The Commonwealth may designate for inclusion in the List of
4 Wetlands of International Importance kept under the Ramsar
5 Convention a wetland containing an area owned or occupied by
6 another person only if the Minister is satisfied that the
7 Commonwealth has used its best endeavours to reach agreement
8 with the other person on:

- 9 (a) the proposed designation of the wetland (so far as it relates to
10 the area); and
11 (b) management arrangements for the wetland (so far as they
12 relate to the area).

13 (2) The Commonwealth may designate a wetland in a State or
14 self-governing Territory for inclusion in the List of Wetlands of
15 International Importance kept under the Ramsar Convention only if
16 the Minister is satisfied that the Commonwealth has used its best
17 endeavours to reach agreement with the State or Territory on:

- 18 (a) the proposed submission of the wetland; and
19 (b) management arrangements for the wetland.

20 (3) A failure to comply with this section does not affect the
21 designation of a wetland for inclusion in the List of Wetlands of
22 International Importance kept under the Ramsar Convention or the
23 status of a wetland as a declared Ramsar wetland.

24 **Subdivision C—Notice of designation of wetland**

25 **327 Minister must give notice of designation of wetland etc.**

26 (1) The Minister must give notice in the *Gazette* and in the way (if
27 any) prescribed by the regulations of any of the following events as
28 soon as practicable after the event occurs:

Section 328

- 1 (a) the Commonwealth designates a wetland for inclusion in the
2 List of Wetlands of International Importance kept under the
3 Ramsar Convention;
4 (b) the Commonwealth extends the boundaries of a wetland it
5 has included in the List;
6 (c) the Commonwealth restricts the boundaries of a wetland it
7 has included in the List;
8 (d) the Commonwealth deletes from the List a wetland it
9 previously included in the List.
- 10 (2) The notice must specify the area included in, or excluded or
11 deleted from, the List as a result of the event.
- 12 (3) A failure to comply with this section does not affect the status of
13 an area as a declared Ramsar wetland.

14 **Subdivision D—Plans for listed wetlands in Commonwealth**
15 **areas**

16 **328 Making plans**

17 *Minister must make plan*

- 18 (1) The Minister must make a written plan for managing a wetland that
19 is included in the List of Wetlands of International Importance kept
20 under the Ramsar Convention and is entirely within one or more
21 Commonwealth areas. The Minister must do so as soon as
22 practicable after the wetland:
23 (a) is included in the List; or
24 (b) becomes entirely within one or more Commonwealth areas.

25 *Amending and replacing plan*

- 26 (2) The Minister may make a written plan amending, or revoking and
27 replacing, a plan made under subsection (1) or this subsection.

1 *Requirements for plan*

- 2 (3) A plan must not be inconsistent with:
3 (a) Australia's obligations under the Ramsar Convention; or
4 (b) any Australian Ramsar management principles.

5 Note: Section 335 explains what Australian Ramsar management principles
6 are.

7 *Ensuring plans reflect current management principles*

- 8 (4) If the Australian Ramsar management principles change so that a
9 plan (the *earlier plan*) is inconsistent with them, the Minister must
10 make another plan:
11 (a) amending the earlier plan so it is not inconsistent with them;
12 or
13 (b) revoking and replacing the earlier plan.

14 *Plan may be in same document as another plan*

- 15 (5) To avoid doubt, a plan under this section for a wetland may be in
16 the same document as:
17 (a) a plan under this section for another wetland; or
18 (b) a plan that this Act or another law of the Commonwealth
19 requires or permits to be prepared.

20 *Commonwealth reserves*

- 21 (6) Despite subsections (1) and (2), the Minister may not make a plan
22 for so much of a wetland as is in a Commonwealth reserve.

23 Note: A management plan must be prepared under Division 4 for a
24 Commonwealth reserve, taking account of Australia's obligations
25 under the Ramsar Convention.

26 *Heard Island and McDonald Islands*

- 27 (7) Despite subsections (1) and (2), the Minister may not make a plan
28 for so much of a wetland as is in the Territory of Heard Island and
29 McDonald Islands and covered by a plan:

Section 329

- 1 (a) that is in operation under the *Environment Protection and*
2 *Management Ordinance 1987* of that Territory; and
3 (b) that the Minister is satisfied is not inconsistent with:
4 (i) Australia's obligations under the Ramsar Convention; or
5 (ii) any Australian Ramsar management principles.

6 **329 Notice of plans**

7 The Minister must give notice of the making of a plan under
8 section 328, in accordance with the regulations.

9 **330 Compliance with plans**

10 The Commonwealth or a Commonwealth agency must not
11 contravene a plan made by the Minister under section 328.

12 **331 Review of plans every 5 years**

13 (1) The Minister must cause a review of a plan made under section 328
14 to be carried out at least once in each period of 5 years after the
15 plan is made.

16 (2) The review must consider whether the plan is consistent with the
17 Australian Ramsar management principles (if any) in force at the
18 time.

19 Note: Section 335 explains what Australian Ramsar management principles
20 are.

21 **Subdivision E—Management of wetlands in States and**
22 **self-governing Territories**

23 **332 Application**

24 (1) This section applies in relation to a wetland that:

- 25 (a) is:
26 (i) in a State; or
27 (ii) in a self-governing Territory; or
-

- 1 (iii) on, over or under the seabed vested in a State by the
2 *Coastal Waters (State Title) Act 1980* or in the Northern
3 Territory by the *Coastal Waters (Northern Territory*
4 *Title) Act 1980*; and
5 (b) is not entirely within one or more Commonwealth areas.

6 **333 Co-operating to prepare and implement plans**

- 7 (1) This section applies in relation to a wetland that is included in the
8 List of Wetlands of International Importance kept under the
9 Ramsar Convention.
- 10 (2) The Commonwealth must use its best endeavours to ensure a plan
11 for managing the wetland in a way that is not inconsistent with
12 Australia's obligations under the Ramsar Convention or any
13 Australian Ramsar management principles is prepared and
14 implemented in co-operation with the State or Territory.

15 Note: The Commonwealth and the State or Territory could make a bilateral
16 agreement adopting the plan and providing for its implementation.

17 **334 Commonwealth responsibilities**

- 18 (1) This section applies in relation to a wetland that is a declared
19 Ramsar wetland.
- 20 (2) The Commonwealth and each Commonwealth agency must take all
21 reasonable steps to ensure it exercises its powers and performs its
22 functions in relation to the wetland in a way that is not inconsistent
23 with:
- 24 (a) the Ramsar Convention; and
25 (b) the Australian Ramsar management principles (if any); and
26 (c) if the wetland is included in the List of Wetlands of
27 International Importance kept under the Ramsar Convention
28 and a plan for managing the property has been prepared as
29 described in section 333—that plan.

1 **Subdivision F—Australian Ramsar management principles**

2 **335 Australian Ramsar management principles**

3 (1) The *Australian Ramsar management principles* are the principles
4 (if any) prescribed by the regulations for management of wetlands
5 included in the List of Wetlands of International Importance kept
6 under the Ramsar Convention.

7 (2) Before the Governor-General makes regulations prescribing
8 principles, the Minister must be satisfied that the principles to be
9 prescribed are consistent with Australia's obligations under the
10 Ramsar Convention.

11 **Subdivision G—Assistance for protecting wetlands**

12 **336 Commonwealth assistance for protecting declared Ramsar**
13 **wetlands**

14 (1) The Commonwealth may give financial or other assistance for the
15 protection or conservation of a declared Ramsar wetland to:

- 16 (a) a State or self-governing Territory in which the wetland
17 occurs; or
18 (b) any other person.

19 (2) The giving of assistance may be made subject to such conditions as
20 the Minister thinks fit.

1

2 **Division 3—Managing Biosphere reserves**

3 **337 Definition of *Biosphere reserve***

4 *A **Biosphere reserve*** is an area designated for inclusion in the
5 World Network of Biosphere Reserves by the International
6 Co-ordinating Council of the Man and the Biosphere program of
7 the United Nations Educational, Scientific and Cultural
8 Organization.

9 **338 Planning for management of Biosphere reserves**

- 10 (1) The Minister may make and implement a written plan for
11 managing a Biosphere reserve, or a part of a Biosphere reserve,
12 entirely within one or more Commonwealth areas. The plan must
13 not be inconsistent with any Australian Biosphere reserve
14 management principles.
- 15 (2) The Commonwealth may co-operate with a State or self-governing
16 Territory to prepare and implement a plan for managing a
17 Biosphere reserve in the State or Territory. The plan must not be
18 inconsistent with any Australian Biosphere reserve management
19 principles.

20 **339 Commonwealth activities in Biosphere reserves**

21 The Commonwealth and each Commonwealth agency must take all
22 reasonable steps to ensure that it exercises its powers and performs
23 its functions in relation to a Biosphere reserve in a way that is not
24 inconsistent with:

25 (a) any Australian Biosphere reserve management principles; or
26 (b) a plan prepared as described in section 338 for managing the
27 Biosphere reserve.

1 **340 Australian Biosphere reserve management principles**

2 (1) The *Australian Biosphere reserve management principles* are the
3 principles (if any) prescribed by the regulations for management of
4 Biosphere reserves.

5 (2) Before the Governor-General makes regulations prescribing
6 principles, the Minister must be satisfied that the principles to be
7 prescribed are consistent with the Statutory Framework of the
8 World Network of Biosphere Reserves established under the Man
9 and the Biosphere program of the United Nations Educational,
10 Scientific and Cultural Organization.

11 **341 Commonwealth assistance for protecting Biosphere reserves**

12 (1) The Commonwealth may give financial or other assistance for the
13 protection or conservation of a Biosphere reserve to:

- 14 (a) a State or self-governing Territory in which the reserve or
15 part of the reserve occurs; or
16 (b) any other person.

17 (2) The giving of assistance may be made subject to such conditions as
18 the Minister thinks fit.

1

2 **Division 4—Commonwealth reserves**

2

3 **Subdivision A—Simplified outline of this Division**

3

4 **342 Simplified outline of this Division**

4

5 The following is a simplified outline of this Division:

5

6 Commonwealth reserves can be declared over areas of land or sea:

6

7 (a) that the Commonwealth owns or leases; or

7

8 (b) that are in a Commonwealth marine area; or

8

9 (c) outside Australia that the Commonwealth has
10 international obligations to protect.

9

10

11 A Proclamation must assign the reserve to a particular category,
12 that affects how the reserve is managed and used.

11

12

13 Some activities can be undertaken in a reserve only if a
14 management plan provides for them. Commonwealth agencies
15 must comply with a management plan. Regulations can be made to
16 control a wide range of activities in reserves.

13

14

15

16

17 The Minister may approve a management plan prepared by the
18 Secretary and any Board for a reserve.

17

18

19 In agreement with indigenous people, the Minister can set up a
20 Board for a reserve including land leased from indigenous people.

19

20

Section 343

1 **Subdivision B—Declaring and revoking Commonwealth**
2 **reserves**

3 **343 Simplified outline of this Subdivision**

4 The following is a simplified outline of this Subdivision:

5 The Governor-General can proclaim Commonwealth reserves over
6 areas of land or sea:

- 7 (a) that the Commonwealth owns; or
8 (b) that the Commonwealth leases; or
9 (c) that are in a Commonwealth marine area; or
10 (d) outside Australia that the Commonwealth has
11 international obligations to protect.

12 A Proclamation must assign the reserve to a particular category
13 that affects how the reserve is managed and used.

14 Proclamations can be made to alter and revoke reserves.

15 The Secretary must consult publicly before some Proclamations are
16 made.

17 **344 Declaring Commonwealth reserves**

18 *Declaring a Commonwealth reserve*

19 (1) The Governor-General may, by Proclamation, declare as a
20 Commonwealth reserve:

- 21 (a) an area of land:
22 (i) that is owned by the Commonwealth in a Territory; or
23 (ii) that is owned by the Commonwealth outside a Territory;
24 or
-

- 1 (iii) that is held under lease by the Commonwealth in a
2 Territory; or
3 (iv) that is held under lease by the Commonwealth outside a
4 Territory; or
5 (v) outside Australia and in respect of which Australia has
6 obligations relating to biodiversity or heritage under an
7 agreement with one or more other countries that may
8 appropriately be met by declaring the area a
9 Commonwealth reserve; or
10 (b) an area of sea:
11 (i) in a Commonwealth marine area; or
12 (ii) outside Australia and in respect of which Australia has
13 obligations relating to biodiversity or heritage under an
14 agreement with one or more other countries that may
15 appropriately be met by declaring the area a
16 Commonwealth reserve; or
17 (c) an area of land described in paragraph (a) and sea described
18 in paragraph (b).

19 Note 1: Section 351 sets out some prerequisites for making Proclamations.

20 Note 2: A reference to Australia generally includes its coastal sea. See section
21 15B of the *Acts Interpretation Act 1901*.

22 *Limits on acquiring land for reservation*

- 23 (2) If land:
24 (a) is in:
25 (i) a State or self-governing Territory (except the Northern
26 Territory); or
27 (ii) the Northern Territory outside both Uluru-Kata Tjuta
28 National Park and the Alligator Rivers Region (as
29 defined by the *Environment Protection (Alligator Rivers
30 Region) Act 1978*); and
31 (b) is dedicated or reserved under a law of the State or Territory
32 for purposes related to nature conservation or the protection
33 of areas of historical, archaeological or geological

Section 345

1 importance or of areas having special significance in relation
2 to indigenous persons;
3 the Commonwealth must not acquire the land for the purposes of
4 declaring it a Commonwealth reserve, without the consent of the
5 State or Territory.

6 *Uluru-Kata Tjuta National Park*

7 (3) *Uluru-Kata Tjuta National Park* is the Commonwealth reserve (as
8 it exists from time to time) to which the name Uluru-Kata Tjuta
9 National Park was given by Proclamation continued in force by the
10 *Environmental Reform (Consequential Provisions) Act 1998*.

11 **345 Extent of Commonwealth reserve**

12 (1) A Commonwealth reserve includes:

- 13 (a) land or seabed to the depth stated in the Proclamation
14 declaring the Commonwealth reserve; and
15 (b) the waters and seabed under any sea in the area declared as a
16 Commonwealth reserve.

17 (2) In this Act:

18 *land* includes subsoil of land and any body of water (whether
19 flowing or not) except the sea.

20 *seabed* includes:

- 21 (a) the surface of a coral formation; and
22 (b) subsoil of seabed (including coral beneath the surface of a
23 coral formation).

24 **346 Content of Proclamation declaring Commonwealth reserve**

25 *Content of Proclamation*

26 (1) The Proclamation declaring an area to be a Commonwealth reserve
27 must:

- 28 (a) give a name to the reserve; and
-

- 1 (b) state the purposes for which the reserve is declared; and
2 (c) state the depth of any land included in the reserve; and
3 (d) state the depth of the seabed that is under any sea included in
4 the reserve; and
5 (e) assign the reserve to one of the following categories (the
6 *IUCN categories*):
7 (i) strict nature reserve;
8 (ii) wilderness area;
9 (iii) national park;
10 (iv) natural monument;
11 (v) habitat/species management area;
12 (vi) protected landscape/seascape;
13 (vii) managed resource protected area.

14 *Assigning different zones of a reserve to different IUCN categories*

- 15 (2) A Proclamation may also divide a reserve into zones and assign
16 each zone to an IUCN category.

17 *Assigning leasehold land to IUCN categories*

- 18 (3) Before the Governor-General makes a Proclamation assigning a
19 Commonwealth reserve or zone including land or seabed held by
20 the Commonwealth under lease to a particular IUCN category, the
21 Minister must be satisfied that the category to which it is proposed
22 to assign the reserve or zone is consistent with the terms of the
23 lease.

24 **347 Assigning Commonwealth reserves and zones to IUCN**
25 **categories**

26 *Prerequisite to making Proclamation*

- 27 (1) Before the Governor-General makes a Proclamation assigning a
28 Commonwealth reserve, or a zone within a Commonwealth
29 reserve, to a particular IUCN category, the Minister must be
30 satisfied:
-

Section 347

- 1 (a) that the reserve or zone:
2 (i) has the characteristics listed in subsection (2) for the
3 category; and
4 (ii) meets the criteria (if any) prescribed by the regulations
5 for the category; and
6 (b) if there are Australian IUCN reserve management principles
7 for the category—that the reserve or zone should be managed
8 in accordance with those principles.

9 *Characteristics for IUCN categories*

- 10 (2) The characteristics are as follows:
11 (a) for a strict nature reserve—the Commonwealth reserve or
12 zone contains some outstanding or representative
13 ecosystems, geological or physiological features or species;
14 (b) for a wilderness area—the Commonwealth reserve or zone
15 consists of a large area of land, sea or both that:
16 (i) is unmodified, or only slightly modified, by modern or
17 colonial society; and
18 (ii) retains its natural character; and
19 (iii) does not contain permanent or significant habitation;
20 (c) for a national park—the Commonwealth reserve or zone
21 consists of an area of land, sea or both in natural condition;
22 (d) for a natural monument—the Commonwealth reserve or zone
23 contains a specific natural feature, or natural and cultural
24 feature, of outstanding value because of its rarity,
25 representativeness, aesthetic quality or cultural significance;
26 (e) for a habitat/species management area—the Commonwealth
27 reserve or zone contains habitat for one or more species; and
28 (f) for a protected landscape/seascape—the Commonwealth
29 reserve or zone contains an area of land (with or without sea)
30 where the interaction of people and nature over time has
31 given the area a distinct character with significant aesthetic,
32 cultural or ecological value;

- 1 (g) for a managed resource protected area—the Commonwealth
2 reserve or zone contains natural systems largely unmodified
3 by modern or colonial technology.

4 **348 Australian IUCN reserve management principles**

- 5 (1) The *Australian IUCN reserve management principles* for an
6 IUCN category are the principles (if any) prescribed by the
7 regulations for that category.
- 8 (2) The principles prescribed for an IUCN category must identify the
9 purpose or purposes for which a Commonwealth reserve, or zone
10 of a Commonwealth reserve, assigned to the category is primarily
11 to be managed.

12 **349 Proclamations assigning reserve or zone to wilderness area**
13 **category may affect management**

14 A Proclamation assigning a Commonwealth reserve, or a zone of a
15 Commonwealth reserve, to the IUCN category of wilderness area
16 may contain provisions regulating the circumstances in which, and
17 the manner in which, the Secretary or his or her agent may do one
18 of the following acts if there is not a management plan in operation
19 for the reserve:

- 20 (a) carry on an excavation;
21 (b) erect a building or other structure;
22 (c) carry out works;
23 (d) fell or take timber;
24 (e) establish a track;
25 (f) use a vehicle, aircraft or vessel;
26 (g) inundate land by means of a dam or other works for affecting
27 the flow of water (whether they are inside or outside the
28 reserve or zone);
29 (h) extract water by canals or other works for affecting the flow
30 of water (whether they are inside or outside the reserve or
31 zone).

Section 350

1 **350 Revocation and alteration of Commonwealth reserves**

2 (1) The Governor-General may revoke or amend a Proclamation under
3 this Subdivision by another Proclamation.

4 Note: Section 351 sets out some prerequisites for making Proclamations.

5 (2) Before the Governor-General makes a Proclamation that results in
6 land, sea or seabed ceasing to be included in a Commonwealth
7 reserve, the Minister must be satisfied:

8 (a) that the Proclamation, if made, would be in accordance with
9 a resolution passed by each House of Parliament on a motion;
10 and

11 (b) that notice of the motion was given at least 15 sitting days of
12 that House before the motion was moved.

13 (3) Subsection (2) does not apply to a Proclamation that results in land,
14 sea or seabed ceasing to be included in one Commonwealth reserve
15 or zone and being included in another Commonwealth reserve or
16 zone.

17 (4) If the Commonwealth ceases to hold land or seabed in a
18 Commonwealth reserve under lease:

19 (a) the land or seabed ceases to be part of the reserve by force of
20 this paragraph; and

21 (b) the Governor-General must make a Proclamation revoking or
22 amending the Proclamation that included the land or seabed
23 in a Commonwealth reserve, to reflect the fact that the land
24 or seabed is no longer part of the reserve.

25 (5) Subsection (4) does not apply if the Commonwealth ceases to hold
26 the land or seabed under a lease because:

27 (a) the Commonwealth becomes the owner of the land or seabed;
28 or

29 (b) the Commonwealth surrenders the lease in consideration of
30 the grant to the Commonwealth of another lease of that land
31 or seabed.

Section 351

1 (6) Except as described in subsection (4), land, sea or seabed in a
2 Commonwealth reserve does not cease to be within the reserve
3 merely because a usage right relating to the land, sea or seabed is
4 transferred, assigned, surrendered, extinguished or changed in any
5 way.

6 (7) A *usage right* is an estate or a legal or equitable charge, power,
7 privilege, authority, licence or permit.

8 Note: Section 22 of the *Acts Interpretation Act 1901* defines *estate*.

9 **351 Report before making Proclamation**

10 *Minister must consider report before Proclamation made*

11 (1) Before the Governor-General makes a Proclamation under this
12 Subdivision, the Minister must consider a report prepared by the
13 Secretary on the matter to be dealt with by the Proclamation.

14 *Procedure for preparing report*

15 (2) In preparing a report, the Secretary must:
16 (a) publish in the *Gazette* and in accordance with the regulations
17 (if any) a notice:
18 (i) stating the matter to be dealt with by the Proclamation;
19 and
20 (ii) inviting the public to comment on the matter to be dealt
21 with by the Proclamation; and
22 (iii) specifying the address to which comments may be sent;
23 and
24 (iv) specifying the day by which any comments must be
25 sent; and
26 (b) consider any comments made in response to the invitation;
27 and
28 (c) include in the report the comments and the Secretary's views
29 on the comments.

Section 351

1 *Content of notice inviting comments*

- 2 (3) A notice stating the matter to be dealt with by a Proclamation to
3 declare a Commonwealth reserve must include a statement of:
4 (a) the proposed name of the reserve; and
5 (b) the proposed boundaries of the reserve and of any zones into
6 which the reserve is to be divided; and
7 (c) the purpose for which the reserve is to be declared; and
8 (d) which IUCN category the reserve (and, if applicable, each
9 zone of the reserve) is to be assigned to; and
10 (e) the purposes for which it is intended to manage and use the
11 reserve.

12 *Content of notice relating to revocation of Commonwealth reserve*

- 13 (4) A notice stating the matter to be dealt with by a Proclamation to
14 cause any land, sea or seabed to cease to be part of a
15 Commonwealth reserve must state the boundaries of that land, sea
16 or seabed.

17 *Time for comment*

- 18 (5) The day specified in the notice as the day by which any comments
19 must be sent must be at least 60 days after the last day on which
20 the notice is published in the *Gazette* or in accordance with any
21 regulations.

22 *When this section does not apply*

- 23 (6) Subsection (1) does not apply in relation to a Proclamation that:
24 (a) declares an area in the Kakadu region to be a Commonwealth
25 reserve; or
26 (b) has the effect of changing:
27 (i) the name of a Commonwealth reserve in the Kakadu
28 region; or
29 (ii) the purposes for which such a reserve is declared; or

- 1 (c) results in land, sea or seabed ceasing to be included in one
2 Commonwealth reserve and being included in another
3 Commonwealth reserve without changing the IUCN category
4 to which the land, sea or seabed is assigned.

5 **352 What happens to Commonwealth leasehold interest when**
6 **Commonwealth reserve is revoked**

- 7 (1) If land held by the Commonwealth under lease ceases to be in a
8 Commonwealth reserve because of a Proclamation made under
9 section 350:
10 (a) the Commonwealth's leasehold interest in the land ceases to
11 exist by force of this paragraph; and
12 (b) if the land is in a State or Territory—the Secretary may give
13 to the officer of the State or Territory responsible for
14 registering land titles a copy of the Proclamation certified by
15 the Secretary; and
16 (c) the officer may make an entry in his or her registers and do
17 anything else needed to reflect the effect of paragraph (a).
18 (2) Paragraph (1)(a) does not apply in relation to a Proclamation that
19 causes land in one Commonwealth reserve to cease to be part of
20 that reserve and to become part of another Commonwealth reserve.

21 **Subdivision C—Activities in Commonwealth reserves**

22 **353 Simplified outline of this Subdivision**

23 The following is a simplified outline of this Subdivision:

24 Many works cannot be carried out in a Commonwealth reserve
25 unless permitted by a management plan.

26 If there is not a management plan in force for a reserve, it must be
27 managed in a way appropriate for the category it has been assigned
28 to by a Proclamation or an earlier management plan.

Section 354

1 Regulations can be made to control activities in reserves.

2 People who have rights relating to an area that is later included in a
3 reserve can continue to exercise those rights in the reserve.

4 **354 Activities that may be carried on only under management plan**

5 (1) A person must not do one of the following acts in a
6 Commonwealth reserve except in accordance with a management
7 plan in operation for the reserve:

- 8 (a) carry on an excavation;
9 (b) erect a building or other structure;
10 (c) carry out works;
11 (d) fell or take timber.

12 Note: These acts are totally prohibited in wilderness areas (except so far as
13 the Secretary is concerned). See section 360.

14 (2) However, if a management plan is not in operation for a
15 Commonwealth reserve, the Secretary or his or her agent may do
16 an act described in subsection (1) for:

- 17 (a) preserving or protecting the reserve; or
18 (b) protecting or conserving biodiversity or heritage in the
19 reserve; or
20 (c) controlling authorised scientific research; or
21 (d) protecting persons or property in the reserve; or
22 (e) managing the effects of actions taken under a usage right
23 described in section 359.

24 Note: The Secretary may only do these acts in a wilderness area under a
25 management plan or Proclamation. See section 360.

26 (3) Subsection (2) does not apply in relation to so much of a
27 Commonwealth reserve as is in the Kakadu region, the Uluru
28 region or the Jervis Bay Territory.

29 Note: Section 385 sets out what the Secretary and his or her agents may do
30 in a Commonwealth reserve in the Kakadu region, Uluru region or

Section 355

1 Jervis Bay Territory when there is not a management plan in operation
2 for the reserve.

3 (4) This section has effect despite any other law of the
4 Commonwealth, a State or a Territory, but:

5 (a) subsections (1) and (2) are subject to:

6 (i) section 359 (about interests and rights existing before a
7 Commonwealth reserve); and

8 (ii) section 360 (about wilderness areas); and

9 (iii) item of Part of Schedule to the *Environmental Reform*
10 *(Consequential Provisions) Act 1998* (about Jabiru); and

11 (b) subsection (1) is also subject to section 385 (about activities
12 in Commonwealth reserves in the Kakadu region, Uluru
13 region or Jervis Bay Territory without management plans).

14 **355 Limits on mining operations in Commonwealth reserves**

15 (1) A person must not carry on mining operations in a Commonwealth
16 reserve unless:

17 (a) the Governor-General has approved the operations; and

18 (b) the person carries them on in accordance with a management
19 plan in operation for the reserve.

20 Note: Section 387 generally prohibits mining operations in Kakadu National
21 Park.

22 (2) The following are *mining operations*:

23 (a) operations or activities connected with, or incidental to, the
24 mining or recovery of minerals or the production of material
25 from minerals, including:

26 (i) prospecting and exploration for minerals; and

27 (ii) milling, refining, treatment and processing of minerals;
28 and

29 (iii) storage and disposal of minerals and materials produced
30 from minerals;

31 (b) the construction and use of towns, camps, dams, pipelines
32 power lines or other structures for the purposes of operations
33 or activities described in paragraph (a);

Section 356

- 1 (c) the performance of any other work for the purposes of
2 operations or activities described in paragraph (a).
- 3 (3) A *mineral* is a naturally occurring substance or mixture of
4 substances.
- 5 (4) Subsection (1) does not prevent the doing of anything for the
6 purposes of building or construction, or the supply of water, in a
7 Commonwealth reserve unless the purposes are connected with, or
8 incidental to, mining operations.
- 9 (5) This section is subject to:
- 10 (a) section 359 (about interests and rights existing before a
11 Commonwealth reserve); and
- 12 (b) section 387 (about mining operations in Kakadu National
13 Park); and
- 14 (c) item of Part of Schedule to the *Environmental Reform*
15 *(Consequential Provisions) Act 1998* (about Jabiru);
- 16 but has effect despite any other law of the Commonwealth, a State
17 or a Territory.

18 **356 Regulations controlling activities relating to Commonwealth**
19 **reserves**

- 20 (1) The regulations may:
- 21 (a) regulate or prohibit the pollution of soil, air or water in a
22 manner that is, or is likely to be, harmful to:
- 23 (i) people, biodiversity or heritage in Commonwealth
24 reserves; or
- 25 (ii) the natural features of Commonwealth reserves; and
- 26 (b) regulate or prohibit tourism in Commonwealth reserves; and
- 27 (c) provide for the protection and preservation of
28 Commonwealth reserves and property and things in
29 Commonwealth reserves; and
- 30 (d) provide for the protection and conservation of biodiversity in
31 Commonwealth reserves; and

- 1 (e) regulate or prohibit access to all or part of a Commonwealth
2 reserve by persons or classes of persons; and
3 (f) provide for the removal of trespassers from Commonwealth
4 reserves; and
5 (g) regulate or prohibit camping in Commonwealth reserves; and
6 (h) provide for the safety of persons in Commonwealth reserves;
7 and
8 (i) regulate or prohibit the use of fire in Commonwealth
9 reserves; and
10 (j) regulate the conduct of persons in Commonwealth reserves;
11 and
12 (k) regulate or prohibit the carrying on of any trade or commerce
13 in a Commonwealth reserve; and
14 (l) regulate or prohibit the use of vehicles in Commonwealth
15 reserves and provide for signs and road markings for those
16 purposes; and
17 (m) provide for:
18 (i) the removal of vehicles, aircraft or vessels from places
19 in Commonwealth reserves where they have been left in
20 contravention of the regulations or have been
21 abandoned; and
22 (ii) the impounding of such vehicles, aircraft or vessels; and
23 (n) provide that the person taken for the purposes of the
24 regulations to be the owner of a motor vehicle involved in a
25 contravention of a provision of the regulations relating to the
26 parking or stopping of vehicles in a Commonwealth reserve
27 is, except as provided otherwise, taken to commit an offence
28 against the provision; and
29 (o) provide for a person to be taken to be the owner of a motor
30 vehicle for the purposes of regulations made under paragraph
31 (n) (including a person in whose name the motor vehicle is
32 registered under the law of a State or Territory); and
33 (p) regulate or prohibit the use of vessels in, and the passage of
34 vessels through, Commonwealth reserves; and

Section 356

- 1 (q) regulate or prohibit the landing and use of aircraft in, and the
2 flying of aircraft over, Commonwealth reserves; and
- 3 (r) provide for the giving of effect to management plans for
4 Commonwealth reserves; and
- 5 (s) regulate or prohibit the taking of animals or plants into or out
6 of Commonwealth reserves; and
- 7 (t) provide for the impounding, removal, destruction or disposal
8 of animals found straying in Commonwealth reserves; and
- 9 (u) regulate or prohibit the taking into Commonwealth reserves,
10 and the use in Commonwealth reserves, of weapons, traps,
11 nets, snares, fishing apparatus and other devices; and
- 12 (v) regulate or prohibit the laying of baits and the use of
13 explosives and poisons in Commonwealth reserves; and
- 14 (w) provide for the collection of specimens and the pursuit of
15 research in Commonwealth reserves for scientific purposes;
16 and
- 17 (x) provide for the issue of licences, permits and authorities
18 relating to activities in Commonwealth reserves, the
19 conditions subject to which they are issued and the charging
20 of fees by the Commonwealth in respect of such licences,
21 permits and authorities; and
- 22 (y) provide for any matter incidental to or connected with a
23 matter described in another paragraph.
- 24 (2) A provision of the regulations regulating or prohibiting the flying
25 of aircraft over a Commonwealth reserve does not have any effect
26 so far as it is inconsistent with a law of the Commonwealth. For
27 this purpose, a provision is not inconsistent with such a law if it
28 can be complied with without contravention of the law.
- 29 (3) A law of a Territory has effect so far as it is not inconsistent with a
30 provision of the regulations having effect in that Territory. For this
31 purpose, such a law is not inconsistent with the provision so far as
32 it can operate concurrently with the provision.

1 **357 Managing Commonwealth reserves while a management plan is**
2 **not in operation**

- 3 (1) While a management plan is not in operation for a Commonwealth
4 reserve, the Secretary must exercise his or her powers and perform
5 his or her functions in relation to the reserve or to a zone of the
6 reserve so as to manage the reserve in accordance with:
- 7 (a) the Australian IUCN reserve management principles (if any)
8 for the IUCN category to which the reserve or zone has most
9 recently been assigned by:
 - 10 (i) a Proclamation made under Subdivision B; or
 - 11 (ii) a management plan that was in operation for the reserve
12 (but is no longer); and
 - 13 (b) if the Commonwealth holds land or seabed included in the
14 reserve under lease—the Commonwealth’s obligations under
15 the lease.
- 16 (2) While a management plan is not in operation for a Commonwealth
17 reserve, the Commonwealth or a Commonwealth agency must not
18 exercise its powers or perform its functions in relation to the
19 reserve or a zone of the reserve inconsistently with either or both of
20 the following:
- 21 (a) the Australian IUCN reserve management principles (if any)
22 for the IUCN category to which the reserve or zone has most
23 recently been assigned by:
 - 24 (i) a Proclamation made under Subdivision B; or
 - 25 (ii) a management plan that was in operation for the reserve
26 (but is no longer);
 - 27 (b) if the Commonwealth holds land or seabed included in the
28 reserve under lease—the Commonwealth’s obligations under
29 the lease.
- 30 (3) If:
- 31 (a) a zone of a Commonwealth reserve is assigned to an IUCN
32 category at or after the time the reserve was most recently
33 assigned to an IUCN category; and

Section 358

- 1 (b) the IUCN category for the zone is different from the IUCN
2 category for the reserve;
3 disregard the IUCN category to which the reserve has been
4 assigned for the purposes of the application of this section in
5 relation to the zone.

6 **358 Restriction on disposal of Commonwealth's interests in**
7 **Commonwealth reserves**

- 8 (1) The Commonwealth must not sell or otherwise dispose of a usage
9 right the Commonwealth holds in relation to land, sea or seabed in
10 a Commonwealth reserve.
- 11 (2) However, the Commonwealth may grant a lease or sub-lease of, or
12 a licence relating to, land or seabed in a Commonwealth reserve,
13 but only in accordance with a management plan in operation for
14 the reserve.
- 15 (3) Despite subsection (1), the Commonwealth may surrender a lease
16 of land or seabed within a Commonwealth reserve in consideration
17 of the grant to the Commonwealth of a new lease of land or seabed
18 that includes that land or seabed.
- 19 (4) The *Lands Acquisition Act 1989* does not apply to the grant or
20 surrender of a lease or sub-lease under this section.
- 21 (5) This section has effect despite any law of the Commonwealth or of
22 a State or Territory.

23 **359 Prior usage rights relating to Commonwealth reserves continue**
24 **to have effect**

- 25 (1) None of the following provisions affect a usage right that was held
26 by a person (other than the Commonwealth) in relation to land, sea
27 or seabed immediately before the land, sea or seabed was included
28 in a Commonwealth reserve:
29 (a) provisions of this Act that relate to the reserve (whether or
30 not they also relate to another Commonwealth reserve);
-

Section 360

- 1 (b) provisions of the regulations that relate to the reserve
2 (whether or not they also relate to another Commonwealth
3 reserve);
4 (c) provisions of a management plan for the reserve.
- 5 (2) None of the provisions described in subsection (1) affect the
6 application of a law of a State or Territory in relation to the usage
7 right.
- 8 (3) The usage right may be renewed or have its term extended only:
9 (a) with the Minister's written consent; and
10 (b) subject to any conditions determined by the Minister.
11 This subsection has effect despite subsections (1) and (2) and any
12 other law of the Commonwealth, a State or a Territory.
- 13 (4) Subsections (1) and (2) apply in relation to a usage right relating to
14 minerals on, in or under land or seabed included in a
15 Commonwealth reserve as if the usage right were a usage right
16 relating to the land or seabed.
- 17 (5) This section applies to a right arising out of a usage right in the
18 same way as it applies to the usage right.
- 19 (6) This section does not apply in relation to:
20 (a) a usage right relating to minerals in Kakadu National Park; or
21 (b) a usage right so far as it relates to mining operations for those
22 minerals.

23 **360 Activities in wilderness areas**

- 24 (1) This section applies only to a Commonwealth reserve, or a zone of
25 a Commonwealth reserve, that is assigned by a Proclamation under
26 Subdivision B or a management plan for the reserve to the IUCN
27 category of wilderness area.
- 28 (2) The Commonwealth reserve or zone must be maintained in its
29 natural state.
- 30 (3) A person may use the Commonwealth reserve or zone only for:
-

Section 360

- 1 (a) scientific research authorised by the Secretary; or
2 (b) a purpose (except recovery of minerals) specified in the
3 provisions of the management plan for the reserve that relate
4 to the zone.
- 5 (4) A person other than the Secretary or his or her agent must not do
6 any of the following acts in the Commonwealth reserve or zone:
7 (a) carry on an excavation;
8 (b) erect a building or other structure;
9 (c) carry out works;
10 (d) fell or take timber;
11 (e) establish a track;
12 (f) use a vehicle, aircraft or vessel;
13 (g) inundate land by means of a dam or other works for affecting
14 the flow of water (whether they are inside or outside the
15 reserve or zone);
16 (h) extract water by canals or other works for affecting the flow
17 of water (whether they are inside or outside the reserve or
18 zone).
- 19 (5) The Secretary or his or her agent must not do an act described in
20 subsection (4) in the Commonwealth reserve or zone, except for
21 purposes essential to the management of the reserve or zone and in
22 accordance with:
23 (a) the provisions of the management plan in operation for the
24 reserve or zone; or
25 (b) if there is not a management plan in operation for the reserve
26 or zone and a Proclamation assigned the reserve or zone to
27 the IUCN category of wilderness area—the provisions of the
28 Proclamation.
- 29 (6) This section has effect despite any other law of the
30 Commonwealth, a State or a Territory, but is subject to section 359
31 (about usage rights existing before a Commonwealth reserve).

1 **Subdivision D—Complying with management plans for**
2 **Commonwealth reserves**

3 **361 Simplified outline of this Subdivision**

4 The following is a simplified outline of this Subdivision:

5 The Secretary must manage a Commonwealth reserve to give
6 effect to a management plan for the reserve. If indigenous people
7 think the Secretary is not doing this for a reserve including their
8 land, they can take the matter up with the Minister.

9 Commonwealth agencies must act so as not to contravene a
10 management plan.

11 **362 Commonwealth and Commonwealth agencies to comply with**
12 **management plan for Commonwealth reserve**

- 13 (1) The Secretary must exercise his or her powers and perform his or
14 her functions to give effect to a management plan that is in
15 operation for a Commonwealth reserve.
- 16 (2) The Commonwealth or a Commonwealth agency must not perform
17 its functions or exercise its powers in relation to a Commonwealth
18 reserve inconsistently with a management plan that is in operation
19 for the reserve.
- 20 (3) To avoid doubt, if a management plan for a Commonwealth
21 reserve prohibits the exercise of a specified power, or the
22 performance of a specified function, under an Act (including a
23 power or function under an instrument made under an Act), the
24 power or function must not be exercised in or in relation to the
25 reserve while the plan is in operation.

Section 363

1 **363 Resolving disagreement between land council and Secretary**
2 **over implementation of plan**

3 *Minister to resolve disagreement*

- 4 (1) If the Chair or Chairperson of a land council for indigenous
5 people's land in a jointly managed reserve and the Secretary
6 disagree about whether the Secretary is exercising his or her
7 powers and performing his or her functions consistently with a
8 management plan in operation for the reserve:
- 9 (a) the Secretary must inform the Minister; and
 - 10 (b) the Minister must appoint a person the Minister considers to
11 be suitably qualified and in a position to deal with the matter
12 impartially to inquire into the matter; and
 - 13 (c) the person appointed must inquire into the matter and give
14 the Minister a report and recommendations; and
 - 15 (d) the Minister must give the Secretary any directions the
16 Minister thinks fit; and
 - 17 (e) the Secretary must comply with any direction.

18 *What is a land council?*

- 19 (2) The *land council* for indigenous people's land in a Commonwealth
20 reserve is:
- 21 (a) if the land is in the area of an Aboriginal Land Council
22 established by or under the *Aboriginal Land Rights (Northern*
23 *Territory) Act 1976*—that Aboriginal Land Council; and
 - 24 (b) if the land is in Jervis Bay Territory—the Wreck Bay
25 Aboriginal Community Council established by the
26 *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; and
 - 27 (c) if the land is elsewhere—a body corporate that:
 - 28 (i) is established by or under an Act; and
 - 29 (ii) has functions relating to the indigenous people's land in
30 the reserve; and
 - 31 (iii) consists of indigenous persons who either live in an area
32 to which one or more of the body's functions relate or
-

1 are registered as traditional owners of indigenous
2 people's land in an area to which one or more of the
3 body's functions relate.

4 *What is indigenous people's land?*

5 (3) Land is *indigenous people's land* if:

- 6 (a) a body corporate holds an estate that allows the body to lease
7 the land to the Commonwealth; and
8 (b) the body corporate was established by or under an Act for the
9 purpose of holding for the benefit of indigenous persons title
10 to land vested in it by or under that Act.

11 *Who is an indigenous person?*

12 (4) A person is an *indigenous person* if he or she is:

- 13 (a) a member of the Aboriginal race of Australia; or
14 (b) a descendant of an indigenous inhabitant of the Torres Strait
15 Islands.

16 *What is a jointly managed reserve?*

17 (5) A Commonwealth reserve is a *jointly managed reserve* if:

- 18 (a) it includes indigenous people's land held under lease by the
19 Commonwealth; and
20 (b) a Board is established for the reserve under Subdivision F.

21 **364 Resolving disagreement between Secretary and Board over**
22 **implementation of plan**

23 (1) The Secretary must inform the Minister if the Secretary believes
24 that:

- 25 (a) a decision of a Board for a Commonwealth reserve is likely
26 to be substantially detrimental to the good management of
27 the reserve; or
28 (b) a decision of a Board for a Commonwealth reserve is
29 contrary to a management plan in operation for the reserve.

Section 365

- 1 (2) The Minister must take the steps he or she thinks fit to resolve the
2 matter.
- 3 (3) If the Minister cannot resolve the matter, the Minister must appoint
4 as an arbitrator to inquire into the matter a person whom the
5 Minister thinks is suitably qualified and in a position to deal with
6 the matter impartially.
- 7 (4) The person appointed must inquire into the matter and give the
8 Minister a report and recommendations.
- 9 (5) After the Minister receives the report and recommendations, he or
10 she must give the Secretary and the Board:
11 (a) the directions the Minister thinks appropriate; and
12 (b) a statement of reasons for giving the directions; and
13 (c) a copy of the report and recommendations.
- 14 (6) The Secretary and the Board must comply with any directions
15 given by the Minister.

16 **Subdivision E—Approving management plans for**
17 **Commonwealth reserves**

18 **365 Simplified outline of this Subdivision**

19 The following is a simplified outline of this Subdivision:

20 The Minister may approve a management plan for a
21 Commonwealth reserve prepared by the Secretary and any Board
22 for the reserve. Before the Minister approves a plan, he or she may
23 modify it.

24 Before the Secretary gives a plan to the Minister for approval, there
25 are 2 opportunities for the public and others with an interest in the
26 reserve to comment.

The Minister can resolve any disagreements between the Secretary and a Board for a reserve over preparation of a plan for the reserve.

366 Obligation to prepare management plans for Commonwealth reserves

Plans required for Commonwealth reserves without Boards

- (1) The Secretary must prepare management plans for each Commonwealth reserve for which there is not a Board to try to ensure that a management plan for the reserve is in operation:
- (a) as soon as practicable after the reserve is declared; and
 - (b) at all times after the first plan for managing the reserve takes effect.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

Amending or replacing plans for reserves without Boards

- (2) The Secretary may prepare a management plan for a Commonwealth reserve for which there is not a Board:
- (a) to amend a management plan that is in operation for the reserve; or
 - (b) to revoke and replace a management plan that is in operation for the reserve.

Plans required for Commonwealth reserves with Boards

- (3) A Board for a Commonwealth reserve must prepare management plans for the reserve in conjunction with the Secretary, to try to ensure that a management plan for the reserve is in operation:
- (a) as soon as practicable after the Board is established; and
 - (b) at all times after a plan for managing the reserve first takes effect after the establishment of the Board.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

Section 367

1

Amending or replacing plans for reserves with Boards

2

(4) The Board for a Commonwealth reserve may prepare a management plan for the reserve in conjunction with the Secretary:

3

4

(a) to amend a management plan that is in operation for the reserve; or

5

6

(b) to revoke and replace a management plan that is in operation for the reserve.

7

8

367 Content of a management plan for a Commonwealth reserve

9

Mandatory content

10

(1) A management plan for a Commonwealth reserve must provide for the protection and conservation of the reserve. In particular, the plan must:

11

12

13

(a) assign the reserve to an IUCN category (whether or not a Proclamation has assigned the reserve or a zone of the reserve to that IUCN category); and

14

15

16

(b) state how the reserve, or each zone of the reserve, is to be managed; and

17

18

(c) state how the natural features of the reserve, or of each zone of the reserve, are to be protected and conserved; and

19

20

(d) if the Commonwealth holds land or seabed included in the reserve under lease—be consistent with the Commonwealth's obligations under the lease; and

21

22

23

(e) specify any limitation or prohibition on the exercise of a power, or performance of a function, under an Act in or in relation to the reserve; and

24

25

26

(f) specify any mining operation, major excavation or other work that may be carried on in the reserve, and the conditions under which it may be carried on; and

27

28

29

(g) specify any other operation or activity that may be carried on in the reserve; and

30

- 1 (h) indicate generally the activities that are to be prohibited or
2 regulated in the reserve, and the means of prohibiting or
3 regulating them; and
4 (i) indicate how the plan takes account of Australia's obligations
5 under each agreement with one or more other countries that
6 is relevant to the reserve (including the World Heritage
7 Convention and the Ramsar Convention, if appropriate).

8 *Plan may assign different zones to different IUCN categories*

- 9 (2) A management plan for a Commonwealth reserve may divide the
10 reserve into zones and assign each zone to an IUCN category
11 (whether or not a Proclamation has assigned the reserve or each
12 zone of the reserve to that IUCN category). The category to which
13 a zone is assigned may differ from the category to which the
14 reserve is assigned.

15 *Consistency with Australian IUCN reserve management principles*

- 16 (3) The provisions of a management plan for a Commonwealth reserve
17 that relate to the reserve or a particular zone of the reserve must not
18 be inconsistent with any Australian IUCN reserve management
19 principles for the IUCN category to which the reserve or zone is
20 assigned by the plan.

21 *If zone is in different category from reserve*

- 22 (4) If the management plan for a Commonwealth reserve assigns the
23 reserve to one IUCN category and assigns a zone of the reserve to
24 a different IUCN category, disregard the IUCN category to which
25 the reserve is assigned for the purposes of the application of
26 subsection (3) in relation to the zone.

27 *Plans for different reserves may appear together*

- 28 (5) A management plan for a Commonwealth reserve may be in the
29 same document as a management plan for another Commonwealth
30 reserve.

Section 368

1 *Plans for proposed extension of reserve*

- 2 (6) A management plan for a Commonwealth reserve may include
3 provisions relating to an area that is proposed to be included in the
4 reserve, but they do not have effect until the area is included in the
5 reserve.

6 **368 Steps in preparing management plans for Commonwealth**
7 **reserves**

8 *Overview of process*

- 9 (1) Before the Secretary gives the Minister a management plan for a
10 Commonwealth reserve for approval:
11 (a) the Minister must publish under subsection (2) an invitation
12 to comment on the proposal to prepare a draft of the plan;
13 and
14 (b) the Secretary and the Board (if any) for the reserve must
15 prepare a draft of the plan, taking into account any comments
16 received in response to the invitation; and
17 (c) the Minister must publish under subsection (5) an invitation
18 to comment on the draft; and
19 (d) the Secretary must make publicly available copies of the
20 draft free or for a reasonable fee determined by the Secretary;
21 and
22 (e) the Secretary and the Board (if any) must consider any
23 comments received in response to the invitation to comment
24 on the draft and may alter the draft.

25 *Notice inviting comments on proposal to prepare draft*

- 26 (2) The Minister must publish a notice in the *Gazette*, in a daily
27 newspaper circulating in each State and self-governing Territory
28 and in accordance with the regulations (if any):
29 (a) stating that the Secretary proposes to prepare a draft of a
30 management plan for the Commonwealth reserve; and
31 (b) inviting comments on the proposal from:
-

- 1 (i) members of the public; and
2 (ii) the Chair or Chairperson of any land council for
3 indigenous people's land in the reserve; and
4 (iii) if the reserve is in a State or self-governing Territory—
5 the agency (if any) of the State or Territory that is
6 responsible for managing national parks established in
7 the State or Territory under a law of the State or
8 Territory; and
9 (iv) if the Minister has established under Division 4 of Part
10 19 an advisory committee with functions relating to the
11 reserve—the committee; and
12 (v) if the Commonwealth holds any land or seabed in the
13 reserve under lease—anyone the Commonwealth is
14 obliged under the lease to consult about management of
15 the land or seabed; and
16 (c) specifying the address to which comments may be sent; and
17 (d) specifying a day (at least 30 days after the last day on which
18 the notice is published in the *Gazette* or in accordance with
19 the regulations (if any)) by which comments must be sent.

20 *Considerations in preparing a management plan*

- 21 (3) In preparing a management plan for a Commonwealth reserve, the
22 Secretary and the Board (if any) for the reserve must take account
23 of:
24 (a) any report considered by the Minister under section 351
25 before a Proclamation declaring the reserve was made; and
26 (b) the regulation of the use of the reserve for the purpose for
27 which it was declared; and
28 (c) the interests of:
29 (i) any owner of any land or seabed in the reserve; and
30 (ii) the traditional owners of any indigenous people's land
31 in the reserve; and
32 (iii) any other indigenous persons interested in the reserve;
33 and

Section 368

- 1 (iv) any person who has a usage right relating to land, sea or
2 seabed in the reserve that existed (or is derived from a
3 usage right that existed) immediately before the reserve
4 was declared; and
5 (d) the protection of the special features of the reserve, including
6 objects and sites of biological, historical, palaeontological,
7 archaeological, geological and geographical interest; and
8 (e) the protection, conservation and management of biodiversity
9 and heritage within the reserve; and
10 (f) the protection of the reserve against damage; and
11 (g) Australia's obligations under agreements between Australia
12 and one or more other countries relevant to the protection and
13 conservation of biodiversity and heritage.

14 *Who are the traditional owners of indigenous people's land?*

- 15 (4) The **traditional owners** of indigenous people's land are:
16 (a) a local descent group of indigenous persons who:
17 (i) have common spiritual affiliations to a site on the land
18 under a primary spiritual responsibility for that site and
19 for the land; and
20 (ii) are entitled by indigenous tradition to forage as of right
21 over the land; or
22 (b) if the land is in the Jervis Bay Territory—the members of the
23 Wreck Bay Aboriginal Community Council.

24 *Notice inviting comment on draft*

- 25 (5) The Minister must publish a notice in the *Gazette*, in a daily
26 newspaper circulating in each State and self-governing Territory
27 and in accordance with the regulations (if any):
28 (a) stating that the Secretary has prepared a draft of a
29 management plan for the Commonwealth reserve; and
30 (b) stating how the draft can be obtained; and
31 (c) inviting comments on the draft from:
32 (i) members of the public; and
-

- 1 (ii) the Chair or Chairperson of any land council for any
2 indigenous people's land in the reserve; and
3 (iii) if the reserve is in a State or self-governing Territory—
4 the agency (if any) of the State or Territory that is
5 responsible for managing national parks established in
6 the State or Territory under a law of the State or
7 Territory; and
8 (iv) if the Minister has established under Division 4 of Part
9 19 an advisory committee with functions relating to the
10 reserve—the committee; and
11 (v) if the Commonwealth holds any land or seabed in the
12 reserve under lease—anyone the Commonwealth is
13 obliged under the lease to consult about management of
14 the land or seabed; and
15 (d) specifying the address to which comments may be sent; and
16 (e) specifying a day (at least 30 days after the last day on which
17 the notice is published in the *Gazette* or in accordance with
18 the regulations (if any)) by which comments must be sent.

19 **369 Resolving disagreements between Secretary and Board in**
20 **planning process**

- 21 (1) The Secretary and the Board for a Commonwealth reserve must
22 inform the Minister if they cannot agree on:
23 (a) the content of a management plan they are preparing for the
24 reserve; or
25 (b) any changes to be made following comment made in
26 response to an invitation to comment on a draft management
27 plan for the reserve; or
28 (c) whether the Secretary should give a management plan for the
29 reserve to the Minister for approval (either initially or after
30 the Minister has given the plan back to the Secretary with
31 suggestions under paragraph 370(3)(b)).

Section 370

- 1 (2) If the Minister is advised by the Secretary and a Board of a
2 disagreement, the Minister must take the steps the Minister thinks
3 fit to resolve the disagreement.
- 4 (3) If the Minister cannot resolve the disagreement, the Minister must
5 appoint as an arbitrator to inquire into the matter a person whom
6 the Minister thinks is suitably qualified and in a position to deal
7 with the matter impartially.
- 8 (4) The appointed arbitrator must inquire into the matter and give the
9 Minister a report and recommendations.
- 10 (5) After the Minister receives the report and recommendations, he or
11 she must give the Secretary and the Board:
12 (a) the directions the Minister thinks appropriate; and
13 (b) a statement of reasons for giving the directions; and
14 (c) a copy of the report and recommendations.
- 15 (6) The Secretary and the Board must comply with any directions
16 given by the Minister.

370 Approval of management plans for Commonwealth reserves

Giving management plan to Minister for approval

- 18
- 19 (1) The Secretary must give the Minister a management plan for a
20 Commonwealth reserve for approval, but only if the Board (if any)
21 for the reserve agrees. The Secretary must do so as soon as
22 practicable after considering under paragraph 368(1)(e) the
23 comments (if any) on a draft of the management plan.

Things to be given to Minister with management plan

- 24
- 25 (2) When the Secretary gives the plan to the Minister, the Secretary
26 must also give the Minister:
27 (a) any comments received in response to the invitation to
28 comment on a draft of the plan; and

- 1 (b) the views of the Secretary and any Board for the reserve on
2 the comments.

3 *Minister's decision*

- 4 (3) After the Secretary has given the plan, the Minister:
5 (a) must consider the plan and any comments and views given to
6 the Minister under subsection (2); and
7 (b) may either:
8 (i) approve the plan; or
9 (ii) give the plan back to the Secretary with suggestions for
10 consideration by the Secretary and any Board for the
11 reserve.

12 Note: There are some extra rules about giving back to the Secretary a
13 management plan for a Commonwealth reserve in the Kakadu region,
14 the Uluru region or Jervis Bay Territory. See section 390.

15 *Procedure if Minister gives plan back*

- 16 (4) If the Minister gives the plan back to the Secretary with
17 suggestions:
18 (a) the Secretary and any Board for the Commonwealth reserve
19 to which the plan relates must consider the suggestions; and
20 (b) the Secretary must give the Minister an identical or altered
21 version of the plan, but only if any Board for the reserve
22 agrees; and
23 (c) the Secretary must give the Minister, with the plan, the
24 Secretary's views on the Minister's suggestions.

25 *Minister's decision on re-submitted plan*

- 26 (5) As soon as practicable after the Secretary has given the Minister a
27 version of the plan under subsection (4), the Minister:
28 (a) must consider it and the views given to the Minister under
29 subsection (4); and
30 (b) must approve the plan with any modifications the Minister
31 considers appropriate.

Section 371

1 *Considerations for Minister assigning reserve to IUCN category*

- 2 (6) When approving a management plan for a Commonwealth reserve
3 to assign the reserve, or a zone of a reserve, to a particular IUCN
4 category, the Minister must be satisfied of the matters specified in
5 section 347 that he or she would have to be satisfied of before the
6 Governor-General could make a Proclamation to assign the reserve
7 or zone to that IUCN category.

8 **371 Approved management plans are disallowable instruments**

- 9 (1) A management plan approved for a Commonwealth reserve by the
10 Minister is a disallowable instrument for the purposes of section
11 46A of the *Acts Interpretation Act 1901*.

12 Note: Section 46A of the *Acts Interpretation Act 1901* provides for the
13 commencement, tabling and disallowance of disallowable instruments.

- 14 (2) To avoid doubt, the provisions mentioned in section 46A of the
15 *Acts Interpretation Act 1901* apply as if the approval of the
16 management plan were the making of the plan.

- 17 (3) When the management plan is laid before each House of the
18 Parliament, there must also be laid before the House copies of any
19 comments, views, report or recommendations given to the Minister
20 under this Division in relation to the plan that have not been given
21 effect to in the plan.

22 **372 Amendment and revocation of management plans for**
23 **Commonwealth reserves**

24 A management plan for a Commonwealth reserve may amend or
25 revoke and replace an earlier management plan for the reserve.

26 **373 Expiry of management plans for Commonwealth reserves**

27 A management plan for a Commonwealth reserve ceases to have
28 effect 7 years after it took effect (unless it has already been
29 revoked).

1 **Subdivision F—Boards for Commonwealth reserves on**
2 **indigenous people’s land**

3 **374 Simplified outline of this Subdivision**

4 The following is a simplified outline of this Subdivision:

5 The Minister must establish a Board for a Commonwealth reserve
6 that is wholly or partly on indigenous people’s land, if the land
7 council for that land (or traditional owners) and the Minister agree
8 that there should be a Board for the reserve.

9 The Board’s role is to make decisions and plans for management of
10 the reserve, in conjunction with the Secretary.

11 A majority of Board members must be indigenous people
12 nominated by traditional owners if the reserve is wholly or mostly
13 on indigenous people’s land.

14 **375 Application**

15 This Subdivision provides for Boards for Commonwealth reserves
16 that consist of, or include, indigenous people’s land held under
17 lease by the Commonwealth.

18 **376 Functions of a Board for a Commonwealth reserve**

- 19 (1) The functions of a Board established for a Commonwealth reserve
20 are:
- 21 (a) to make decisions relating to the management of the reserve
22 that are consistent with the management plan in operation for
23 the reserve; and
 - 24 (b) in conjunction with the Secretary, to:
 - 25 (i) prepare management plans for the reserve; and
 - 26 (ii) monitor the management of the reserve; and

Section 377

- 1 (iii) advise the Minister on all aspects of the future
2 development of the reserve.
- 3 (2) When performing its functions, a Board must comply with a
4 direction given by the Minister to the Board under:
- 5 (a) section 364 (Resolving disagreement between Secretary and
6 Board over implementation of plan); or
7 (b) section 369 (Resolving disagreements between Secretary and
8 Board in planning process).

9 **377 Minister must establish Board if land council or traditional**
10 **owners agree**

- 11 (1) The Minister must establish a Board for a specified
12 Commonwealth reserve by notice published in the *Gazette* and in
13 the way (if any) prescribed by the regulations if he or she agrees on
14 the matters set out in subsection (2) with:
- 15 (a) the land council for the indigenous people's land in the
16 reserve that the Commonwealth holds under lease; or
17 (b) if there is not such a land council—the traditional owners of
18 the indigenous people's land in the reserve that the
19 Commonwealth holds under lease.
- 20 (2) The matters to be agreed on are:
- 21 (a) that a Board should be established for the reserve; and
22 (b) the name of the Board; and
23 (c) the number of positions of member of the Board; and
24 (d) the qualifications for appointment to each position of
25 member of the Board.
- 26 (3) The notice must specify each of the matters described in
27 paragraphs (2)(b), (c) and (d).
- 28 Note: The notice may specify different qualifications for different positions.
29 See subsection 33(3A) of the *Acts Interpretation Act 1901*.
- 30 (4) If the reserve consists wholly or mostly of indigenous people's
31 land held by the Commonwealth under lease, a majority of the

Section 378

1 members of the Board must be indigenous persons nominated by
2 the traditional owners of the indigenous people's land.

3 (5) If the reserve is in a State or self-governing Territory, at least one
4 member of the Board must be a person nominated by the State or
5 Territory.

6 Note: By agreement between the Minister and the land council or traditional
7 owners, more than one member of a Board may be a person
8 nominated by the State or Territory.

9 **378 Altering the constitution of a Board or abolishing a Board**

10 *Revoking and amending notice establishing Board*

- 11 (1) The Minister may, by notice in the *Gazette*:
- 12 (a) revoke a notice under section 377 relating to the Board for
13 the reserve; or
- 14 (b) amend a notice under section 377 relating to the Board for
15 the reserve so as to:
- 16 (i) change the specification of the name by which the
17 Board is to be known; or
- 18 (ii) increase the number of members of the Board and
19 specify the qualifications for appointment to each of the
20 extra positions of member; or
- 21 (iii) decrease the number of positions of member of the
22 Board and specify which positions are abolished; or
- 23 (iv) change the qualifications for appointment to a position
24 of member of the Board.

25 Note: The Minister may exercise the power of amendment from time to
26 time. See subsection 33(1) of the *Acts Interpretation Act 1901*.

27 *Limits on changing composition of Board*

28 (2) Paragraph (1)(b) has effect subject to subsections 377(4) and (5).

29 Note 1: Subsection 377(4) requires a majority of the members of the Board of
30 a Commonwealth reserve consisting wholly or mostly of indigenous
31 people's land held by the Commonwealth under lease to be indigenous
32 persons nominated by the traditional owners of the land.

1 *Validity of appointments*

- 2 (3) A deficiency or irregularity relating to the nomination, selection or
3 appointment of a member of a Board does not invalidate the
4 member's appointment.

5 **380 Terms and conditions**

6 *Term of office*

- 7 (1) A member of a Board holds office for the period specified in the
8 instrument of appointment. The period must not exceed 5 years.

9 Note: Section 382 sets out the circumstances in which a member's
10 appointment may be (or must be) terminated.

11 *Resignation*

- 12 (2) A member of a Board may resign his or her appointment by giving
13 the Minister a written resignation.

14 *Other terms and conditions*

- 15 (3) A member of a Board holds office on the terms and conditions (if
16 any) that are determined by the Minister in relation to matters not
17 covered by this Act or the regulations.

18 **381 Remuneration**

- 19 (1) A member of a Board is to be paid the remuneration that is
20 determined by the Remuneration Tribunal. If no determination of
21 that remuneration by the Tribunal is in operation, the member is to
22 be paid the remuneration that is prescribed.

- 23 (2) A member of a Board is to be paid the allowances that are
24 prescribed.

- 25 (3) This section has effect subject to the *Remuneration Tribunal Act*
26 1973.

Section 382

1 **382 Termination of appointments of Board members**

2 *Termination when person stops being qualified for appointment*

- 3 (1) The appointment of a person to a position of member of a Board is
4 terminated when the person ceases to be qualified for appointment
5 to the position.

6 *Termination for misbehaviour or incapacity*

- 7 (2) The Minister may terminate the appointment of a member of a
8 Board for misbehaviour or physical or mental incapacity.

9 *Termination for failure to attend Board meetings*

- 10 (3) The Minister may terminate the appointment of a member of a
11 Board if the member is absent, except on leave of absence, from 3
12 consecutive meetings of the Board of which the member has had
13 notice.

14 *Termination for engaging in conflicting work*

- 15 (4) The Minister may terminate the appointment of a member of a
16 Board if the member engages in paid employment that, in the
17 Minister's opinion, conflicts or could conflict with the proper
18 performance of the duties of the member.

19 *Termination for failure to disclose interests*

- 20 (5) The Minister must terminate the appointment of a member of a
21 Board if:
22 (a) the member does not comply with any requirements
23 prescribed by the regulations to disclose an interest the
24 member has in a matter being considered or about to be
25 considered by the Board; and
26 (b) the member does not have a reasonable excuse for not
27 complying.

1 *Termination on request by nominator*

- 2 (6) The Minister must terminate the appointment of a member of a
3 Board if:
4 (a) the member was appointed on the nomination of a particular
5 person, body or group of persons; and
6 (b) the person, body or group gives the Minister a written request
7 to terminate the appointment.

8 *Termination for bankruptcy or insolvency*

- 9 (7) The Minister may terminate the appointment of a member of the
10 Board if the member:
11 (a) becomes bankrupt; or
12 (b) applies to take the benefit of any law for the relief of
13 bankrupt or insolvent debtors; or
14 (c) compounds with his or her creditors; or
15 (d) makes an assignment of his or her remuneration for the
16 benefit of his or her creditors.

17 **383 Procedure of a Board**

- 18 (1) The regulations may provide for:
19 (a) matters relating to the operation of a Board, including:
20 (i) procedures for convening meetings of the Board; and
21 (ii) procedures for determining who is to preside at a
22 meeting of the Board; and
23 (iii) determining who may attend a meeting of the Board;
24 and
25 (iv) the constitution of a quorum for a meeting of the Board;
26 and
27 (v) procedures relating to a member's interest in matters
28 being dealt with by the Board; and
29 (vi) the way in which matters are to be resolved by the
30 Board; and

Section 384

- 1 (b) the appointment and rights of a deputy of a member of a
2 Board.
- 3 (2) The regulations may allow a Board to determine a matter relating
4 to the operation of the Board for which the regulations may
5 provide.
- 6 (3) If there are no regulations in force, a Board may operate in the way
7 it determines.

8 **Subdivision G—Special rules for some Commonwealth reserves**
9 **in the Northern Territory or Jervis Bay Territory**

10 **384 Simplified outline of this Subdivision**

11 The following is a simplified outline of this Subdivision:

12 Special rules apply to Commonwealth reserves in the Kakadu
13 region, Uluru region and Jervis Bay Territory, affecting the
14 activities that can be carried on in those reserves.

15 Special procedures apply to planning for management of reserves
16 in the Kakadu region, Uluru region and Jervis Bay Territory. These
17 provide for extra involvement of indigenous people in the planning
18 process.

19 **385 Activities in Commonwealth reserve without management plan**

20 When a management plan is not in operation for a particular
21 Commonwealth reserve wholly or partly in the Kakadu region,
22 Uluru region or Jervis Bay Territory, the Secretary may perform
23 the Secretary's functions and exercise the Secretary's powers in
24 and in relation to a part of the reserve in the region, subject to any
25 directions of the Minister.

1 **386 What are the *Kakadu region* and the *Uluru region*?**

2 (1) The *Kakadu region* is the part of the Alligator Rivers Region (as
3 defined in the *Environment Protection (Alligator Rivers Region)*
4 *Act 1978*) that excludes:

- 5 (a) the area shown as the Arnhem Land Aboriginal Reserve on
6 the map mentioned in that definition; and
7 (b) the areas that are pastoral leases and are described on that
8 map as Mount Bunday and Eva Valley.

9 (2) The *Uluru region* is the area of land described under the heading
10 “Uluru” in Schedule 1 to the *Aboriginal Land Rights (Northern*
11 *Territory) Act 1976*.

12 **387 No mining operations in Kakadu National Park**

13 (1) A person must not carry out mining operations in Kakadu National
14 Park.

15 (2) Subsection (1) and subsection 355(1) do not prevent:

- 16 (a) the use, development or reconstruction of the township
17 known as Jabiru; or
18 (b) the transportation of anything in Kakadu National Park along
19 routes (including air routes) prescribed by the regulations for
20 the purposes of this paragraph; or
21 (c) the construction and use of pipelines and power lines in
22 Kakadu National Park along routes prescribed by the
23 regulations for the purposes of this paragraph; or
24 (d) the doing of anything for the purposes of building or
25 construction, or the supply of water, in Kakadu National Park
26 as long as the purposes are not connected with, or incidental
27 to, mining operations; and
28 (e) prescribed activities carried on in Kakadu National Park in
29 connection with, or incidental to, mining operations carried
30 on outside Kakadu National Park.

Section 388

- 1 (3) ***Kakadu National Park*** is the Commonwealth reserve (as it exists
2 from time to time) to which the name Kakadu National Park was
3 given by Proclamation continued in force by the *Environmental*
4 *Reform (Consequential Provisions) Act 1998*.

5 **388 Establishment and development of townships in the Kakadu**
6 **region and Uluru region**

- 7 (1) A person may develop a township in a part of a Commonwealth
8 reserve, but only if:
9 (a) the part is in the Kakadu region or the Uluru region; and
10 (b) the person does so in accordance with:
11 (i) subsection (2) or (3); and
12 (ii) the management plan for the reserve; and
13 (iii) a town plan prepared and approved in accordance with
14 the regulations.
- 15 (2) A person (other than the Commonwealth) may develop a township
16 only:
17 (a) on land that the person holds under lease or sub-lease from
18 the Commonwealth; or
19 (b) on land that was developed before 9 June 1978, if the
20 township was established before it was included in the
21 reserve.
- 22 (3) The Commonwealth may develop a township only if the township
23 did not exist before its site became part of the Commonwealth
24 reserve.
- 25 (4) A person may only construct, alter or demolish a building or
26 structure in a township in accordance with the management plan
27 for the Commonwealth reserve and the town plan.

1 **389 Planning for townships**

2 *Management plan provisions*

- 3 (1) The provisions of a management plan for a Commonwealth reserve
4 that relate to a township must include provisions for and in relation
5 to:
6 (a) the site of the township and the general purposes of the
7 township, if the township was not established before its site
8 was included in the reserve; and
9 (b) the terms and conditions of any lease or sub-lease from the
10 Commonwealth of land on which the township is to be
11 established or developed; and
12 (c) the purposes of any zones into which the township is to be
13 divided.

14 *Town plan provisions*

- 15 (2) A town plan must make detailed provision relating to the proposed
16 construction or development of the township, including, in
17 particular, the provision (if any) to be made for:
18 (a) housing, shops, offices and other buildings and structures;
19 and
20 (b) bridges, railways, roads, streets, footpaths and parking areas;
21 and
22 (c) the supply of water, electricity and gas; and
23 (d) the standards to be maintained in the construction and
24 alteration of buildings and structures; and
25 (e) sewerage and drainage; and
26 (f) public amenities for recreation and other purposes; and
27 (g) any other matters that are specified for the purposes of this
28 paragraph by:
29 (i) the management plan for the Commonwealth reserve
30 containing the township; or
31 (ii) the regulations; or

Section 390

- 1 (iii) any lease or sub-lease from the Commonwealth of land
2 on which the township is to be established or developed.

3 *Town plans may adopt, apply or incorporate other instruments*

- 4 (3) For the purposes of subsection (2), a town plan may apply, adopt or
5 incorporate, with or without modification:
6 (a) the provisions of any law of the Northern Territory (or a part
7 of the Territory) that would not otherwise apply in relation to
8 the township, as in force at a specified time or as in force
9 from time to time; or
10 (b) any matter contained in any instrument or writing as in force
11 or existing at a specified time.

12 *Town plans must not be inconsistent with other instruments*

- 13 (4) A town plan must never be inconsistent with:
14 (a) the management plan for the Commonwealth reserve that
15 includes the township; or
16 (b) any lease or sub-lease from the Commonwealth of land on
17 which the township is to be established or developed.

18 *Revocation and variation of town plans*

- 19 (5) A town plan may be revoked or amended in the manner provided
20 by the regulations.

21 Note: Town plans are to be prepared and approved in accordance with the
22 regulations. See subparagraph 388(1)(b)(iii).

23 **390 Special rules to protect Aboriginal interests in planning process**

- 24 (1) This section sets out some extra rules about the process of
25 preparing management plans for a Commonwealth reserve wholly
26 or partly within the Kakadu region, the Uluru region or Jervis Bay
27 Territory.
28 (2) The Minister must give a management plan for a Commonwealth
29 reserve back to the Secretary with suggestions under paragraph
-

Section 390

- 1 370(3)(b) if the Minister is satisfied that there is a substantial
2 difference of opinion between:
- 3 (a) the Chair or Chairperson of a land council for indigenous
4 people's land in the reserve, on the one hand; and
5 (b) the Secretary, or the Secretary and the Board for the reserve
6 (if it is a jointly managed reserve), on the other hand.
- 7 (3) If the Minister gives the plan back to the Secretary with
8 suggestions under paragraph 370(3)(b) (whether because of
9 subsection (2) or not), the Minister must:
- 10 (a) give a copy of the suggestions to:
- 11 (i) the Chair or Chairperson of each land council for
12 indigenous people's land in the reserve; and
13 (ii) the Conservation Commission of the Northern Territory,
14 if the plan is for a Commonwealth reserve wholly or
15 partly in the Territory; and
16 (b) invite each person to whom the Minister gave a copy of the
17 suggestions to give the Secretary comments on the
18 suggestions within 14 days.
- 19 (4) When considering the Minister's suggestions as required by
20 paragraph 370(4)(a), the Secretary and any Board for the reserve
21 must also consider any comments made in response to the
22 Minister's invitation.
- 23 (5) When the Secretary gives the Minister an identical or altered
24 version of the plan under paragraph 370(4)(b), the Secretary must
25 also:
- 26 (a) give the Minister a copy of the comments (if any) made in
27 response to the Minister's invitation, and the Secretary's
28 views on those comments; and
29 (b) give the Chair or Chairperson of each land council for
30 indigenous people's land in the reserve a copy of the version
31 of the plan given to the Minister and of the comments and
32 views (if any) being given to the Minister under paragraph
33 (a).
-

Chapter 5 Conservation of biodiversity

Part 15 Protected areas

Division 4 Commonwealth reserves

Section 390

- 1 (6) The Chair or Chairperson of a land council for indigenous people's
2 land in the reserve may make comments to the Minister relating to
3 the version of the plan within 14 days of receiving the copy of it.
- 4 (7) If the Minister receives comments from the Chair or Chairperson
5 of a land council for indigenous people's land in the reserve and
6 the Minister is satisfied that there is a substantial difference of
7 opinion between the Chair or Chairperson and the Secretary over
8 the plan:
9 (a) the Minister may appoint a person the Minister considers to
10 be suitably qualified and in a position to deal with the matter
11 impartially to inquire into the matter; and
12 (b) the person appointed must inquire into the matter and give
13 the Minister a report and recommendations.
- 14 (8) The Minister:
15 (a) must also consider:
16 (i) the comments (if any) made to the Minister by the Chair
17 or Chairperson under subsection (6); and
18 (ii) the report and recommendations (if any) given to the
19 Minister under subsection (7);
20 when considering under subsection 370(5) the version of the
21 plan given to the Minister under paragraph 370(4)(b); and
22 (b) must not approve the plan before the end of the period
23 described in subsection (6).

1
2 **Chapter 6—Administration**

3 **Part 16—Application of precautionary principle in**
4 **decision-making**
5

6 **391 Minister must consider precautionary principle in making**
7 **decisions**

8 *Taking account of precautionary principle*

- 9 (1) The Minister must take account of the precautionary principle in
10 making a decision listed in the table in subsection (3), to the extent
11 he or she can do so consistently with the other provisions of this
12 Act.

13 *Precautionary principle*

- 14 (2) The *precautionary principle* is that lack of full scientific certainty
15 should not be used as a reason for postponing a measure to prevent
16 degradation of the environment where there are threats of serious
17 or irreversible environmental damage.

18 *Decisions in which precautionary principle must be considered*

- 19 (3) The decisions are:
20

Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
1	75	whether an action is a controlled action
2	133	whether or not to approve the taking of an action
3	201	whether or not to grant a permit
4	216	whether or not to grant a permit

Section 391

Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
5	237	whether or not to grant a permit
6	258	whether or not to grant a permit
7	267	about making a recovery plan or threat abatement plan or adopting a plan as a recovery plan or threat abatement plan
8	280	about approving a variation of a plan adopted as a recovery plan or threat abatement plan
9	285	about making a wildlife conservation plan or adopting a plan as a wildlife conservation plan
10	295	about approving a variation of a plan adopted as a wildlife conservation plan
11	316	about making a plan for managing a property that is included in the World Heritage List and is entirely within one or more Commonwealth areas
12	328	about making a plan for managing a wetland that is designated for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention and is entirely within one or more Commonwealth areas
13	338	about making a plan for managing a Biosphere reserve entirely within one or more Commonwealth areas
14	370	about approving a management plan for a Commonwealth reserve

1

2 **Part 17—Enforcement**

3 **Division 1—Wardens, rangers and inspectors**

4 **Subdivision A—Wardens and rangers**

5 **392 Appointment of wardens and rangers**

6 The Minister may, in writing, appoint:

- 7 (a) an officer or employee of the Department; or
8 (b) a person covered by an arrangement made under section 393;
9 to be a warden or ranger.

10 **393 Arrangements for certain officers or employees to exercise**
11 **powers etc. of wardens or rangers**

- 12 (1) The Secretary may make arrangements with the Secretary of
13 another Department of the Australian Public Service, or with an
14 authority of the Commonwealth, for the performance or exercise of
15 all or any of the functions or powers of wardens and rangers under
16 this Act or the regulations by officers or employees in that
17 Department or authority, as the case may be.
- 18 (2) The Minister may enter into an arrangement with the appropriate
19 Minister of a State or of the Australian Capital Territory or of the
20 Northern Territory for:
21 (a) officers or employees in the Public Service of the State or
22 Territory, or in an authority of the State or Territory
23 (including a local government body); or
24 (b) members of the police force of the State or Territory;
25 to perform or exercise all or any of the functions or powers of
26 wardens or rangers under this Act or the regulations.
- 27 (3) The Minister may enter into an arrangement with the appropriate
28 person holding an office under section 13 of the *Norfolk Island Act*

Section 394

1 *1979* for persons appointed or employed under an enactment
2 referred to in section 61 of that Act to perform or exercise all or
3 any of the functions or powers of wardens or rangers under this Act
4 or the regulations.

5 **394 Wardens *ex officio***

6 By force of this section each member or special member of the
7 Australian Federal Police is a warden.

8 **395 Identity cards**

- 9 (1) The Minister must issue to each warden (except a member of a
10 police force) and to each ranger, an identity card, in a form
11 approved by the Minister, containing a photograph of the person to
12 whom it is issued.
- 13 (2) If a person stops being a warden or ranger, the person must
14 immediately return his or her identity card to the Minister.
- 15 (3) A person who contravenes subsection (2) is guilty of an offence
16 punishable on conviction by a fine not exceeding one penalty unit.

17 **Subdivision B—Inspectors**

18 **396 Appointment of inspectors**

- 19 (1) The Minister may, in writing, appoint a person to be an inspector.
- 20 (2) The Minister may make a written determination that a specified
21 person, or a person included in a specified class of persons, does
22 not have such of the powers conferred on an inspector by this Act
23 as are specified in the determination. The determination has effect
24 accordingly.
- 25 (3) If the Minister makes a determination under subsection (2) about a
26 named individual, the Minister must give the individual a copy of
27 the determination.

1 **397 Inspectors *ex officio***

2 By force of this section each of the following is an inspector:

- 3 (a) each member or special member of the Australian Federal
4 Police;
- 5 (b) each person appointed as an inspector under section 43 of the
6 *Great Barrier Reef Marine Park Act 1975* (other than such a
7 person whose appointment relates only to the powers of an
8 inspector under Part VIIA of that Act).

9 **398 Arrangements for State and Territory officers to be inspectors**

10 (1) The Minister may enter into an arrangement with the appropriate
11 Minister of a State or of the Australian Capital Territory or of the
12 Northern Territory for:

- 13 (a) officers or employees of the Public Service of the State or
14 Territory, or of an authority of the State or Territory
15 (including a local government body); or
16 (b) members of the police force of the State or Territory;

17 to be inspectors, and that arrangement has effect accordingly.

18 (2) The Minister may enter into an arrangement with the appropriate
19 person holding an office under section 13 of the *Norfolk Island Act*
20 1979 for persons appointed or employed under an enactment
21 referred to in section 61 of that Act to be inspectors, and that
22 arrangement has effect accordingly.

23 (3) The Minister may make a written determination that a specified
24 person, or a person included in a specified class of persons, who is
25 an inspector because of this section does not have such of the
26 powers conferred on an inspector by this Act as are specified in the
27 determination. The determination has effect accordingly.

28 (4) If the Minister makes a determination under subsection (3) about a
29 named individual, the Minister must give the individual a copy of
30 the determination.

Section 399

1 **399 Identity cards**

- 2 (1) The Minister must issue to an inspector, (except a member of a
3 police force), an identity card in a form approved by the Minister,
4 containing a photograph of the person to whom it is issued.
- 5 (2) If a person stops being an inspector, the person must immediately
6 return his or her identity card to the Minister.
- 7 (3) A person who contravenes subsection (2) is guilty of an offence
8 punishable on conviction by a fine not exceeding one penalty unit.

9 **Subdivision C—Miscellaneous**

10 **400 Regulations may give wardens, rangers and inspectors extra**
11 **powers, functions and duties**

12 The regulations may provide for functions and powers to be
13 conferred, and duties to be imposed, on wardens, rangers and
14 inspectors.

15 **401 Impersonating authorised officers and rangers**

- 16 (1) A person is guilty of an offence if:
17 (a) the person:
18 (i) impersonates an authorised officer or a ranger on an
19 occasion; and
20 (ii) does so knowing it to be an occasion when the officer or
21 ranger would be on duty and doing an act or attending a
22 place; or
23 (b) the person:
24 (i) falsely represents himself or herself to be an authorised
25 officer or a ranger; and
26 (ii) does an act or attends a place in the assumed character
27 of that officer or ranger; or
28 (c) the person:

Section 402

- 1 (i) impersonates an authorised officer or a ranger or falsely
2 represents himself or herself to be an authorised officer
3 or a ranger; and
4 (ii) does so with the intention of obtaining a gain, causing a
5 loss or influencing the exercise of a public duty.
- 6 (2) Subsection (1) does not apply to an authorised officer or a ranger.
- 7 (3) An authorised officer or a ranger is guilty of an offence if:
8 (a) the officer or ranger:
9 (i) impersonates another authorised officer or ranger on an
10 occasion; and
11 (ii) does so knowing it to be an occasion when the other
12 officer or ranger would be on duty and doing an act or
13 attending a place; or
14 (b) the officer or ranger:
15 (i) falsely represents himself or herself to be another
16 authorised officer or a ranger; and
17 (ii) does an act or attends a place in the assumed character
18 of the other officer or ranger; or
19 (c) the officer or ranger:
20 (i) impersonates another authorised officer or a ranger or
21 falsely represents himself or herself to be another
22 authorised officer or a ranger; and
23 (ii) does so with the intention of obtaining a gain, causing a
24 loss or influencing the exercise of a public duty.
- 25 (4) An offence against this section is punishable, on conviction, by
26 imprisonment for not more than 2 years or a fine not exceeding 120
27 penalty units, or both.

28 **402 Offences against authorised officers and rangers**

- 29 (1) A person is guilty of an offence if the person:
30 (a) uses or threatens violence against another person; and
-

Section 402

- 1 (b) does so knowing that the other person is an authorised officer
2 or a ranger; and
3 (c) does so because of that other person's status as an authorised
4 officer or ranger.
- 5 (2) An offence against subsection (1) is punishable, on conviction, by
6 imprisonment for not more than 7 years or a fine not exceeding 420
7 penalty units, or both.
- 8 (3) A person is guilty of an offence if the person:
9 (a) obstructs, intimidates, resists or hinders another person who
10 is an authorised officer or a ranger exercising or performing
11 his or her powers, duties or functions; and
12 (b) does so knowing that the other person is an authorised officer
13 or ranger.
- 14 (4) An offence against subsection (3) is punishable, on conviction, by
15 imprisonment for not more than 2 years or a fine not exceeding 120
16 penalty units, or both.
- 17 (5) It is immaterial whether the defendant was aware that the
18 authorised officer or ranger was engaged in the exercise or
19 performance, or attempted exercise or performance of a power,
20 duty or function of such officer or ranger.
- 21 (6) It is a defence in proceedings for an offence against subsection (3),
22 if at the time of the conduct constituting the offence, the authorised
23 officer or ranger was abusing his or her power.
- 24 (7) This section does not limit the power of a court to punish a
25 contempt of that court.
- 26 (8) Subsections (1) and (3) are not intended to exclude or limit the
27 concurrent operation of any law of the Australian Capital Territory
28 in a case where the other person referred to in that subsection is a
29 member or special member of the Australian Federal Police.

1
2 **Division 2—Boarding of vessels etc. and access to premises**
3 **by consent**

4 **403 Boarding of vessels etc. by authorised officers**

5 (1) This section applies to:

- 6 (a) any Australian vessel, Australian aircraft or Australian
7 platform;
8 (b) any vehicle, vessel or aircraft that is in Australia or an
9 external Territory;
10 (c) any vessel, or any aircraft capable of landing on water, that is
11 in the territorial sea of Australia or an external Territory; and
12 (d) any aircraft that is over or in Australia or an external
13 Territory.

14 (2) If an authorised officer suspects on reasonable grounds that there is
15 in, or on, a vehicle, vessel, aircraft or platform any evidential
16 material, the authorised officer may, with such assistance as he or
17 she thinks necessary:

- 18 (a) board the vehicle, vessel, aircraft or platform at any
19 reasonable time for the purpose of exercising, and may
20 exercise, the powers of an authorised officer under section
21 406; and
22 (b) in the case of a vehicle, vessel or aircraft—stop and detain
23 the vehicle, vessel or aircraft for that purpose.

24 (3) If an authorised officer or the person in command of a
25 Commonwealth ship or of a Commonwealth aircraft suspects on
26 reasonable grounds that a vessel which is in the territorial sea of
27 Australia or an external Territory has been used or otherwise
28 involved in the commission of an offence against this Act or the
29 regulations, he or she may:

- 30 (a) bring the vessel to the nearest port in Australia or an external
31 Territory to which it is safe and practicable to bring the
32 vessel; or

Section 403

- 1 (b) by means of an international signal code or other
2 internationally recognised means of communication with a
3 vessel, require the person in charge of the vessel to bring the
4 vessel to that port.
- 5 (4) If an authorised officer or the person in command of a
6 Commonwealth ship or of a Commonwealth aircraft suspects on
7 reasonable grounds that:
8 (a) an aircraft has been used or otherwise involved in the
9 commission of an offence against this Act or the regulations;
10 and
11 (b) the aircraft is over or in Australia or an external Territory;
12 he or she may, by means of an international signal code or other
13 internationally recognised means of communication with an
14 aircraft, require the person in charge of the aircraft to bring the
15 aircraft to the nearest airport in Australia or an external Territory to
16 which it is safe and practicable to bring the aircraft.
- 17 (5) An authorised officer may, for the purposes of this Act, require the
18 person in charge of a vehicle, vessel, aircraft or platform to give
19 information concerning the vehicle, vessel, aircraft or platform and
20 its crew and any other person on board the vehicle, vessel, aircraft
21 or platform.
- 22 (6) In this Act:
- 23 ***Australian platform*** means a platform that:
24 (a) is fixed to the continental shelf of Australia or of an external
25 Territory, or to the sea-bed between Australian waters; or
26 (b) is otherwise operating in that part of the sea above the
27 continental shelf of Australia or of an external Territory, or in
28 the territorial sea of Australia or an external Territory.
- 29 ***Commonwealth aircraft*** means an aircraft in the service of the
30 Commonwealth on which the prescribed ensign or prescribed
31 insignia of the aircraft is displayed.

1 **Commonwealth ship** means a ship in the service of the
2 Commonwealth on which the prescribed ensign of the ship is
3 flying.

4 **404 Authorised officers to produce identification**

- 5 (1) If an authorised officer (other than a member of a police force who
6 is in uniform) boards a vehicle, vessel, aircraft or platform to
7 which section 403 applies, the authorised officer must:
- 8 (a) in the case of a member of a police force—produce, for
9 inspection by the person in charge of that vehicle, vessel,
10 aircraft or platform, written evidence of the fact that he or she
11 is a member of that police force; or
- 12 (b) in any other case—produce his or her identity card for
13 inspection by that person.
- 14 (2) An authorised officer who does not comply with subsection (1) is
15 not authorised to remain, or to require any person assisting the
16 authorised officer to remain, on board the vehicle, vessel, aircraft
17 or platform, or to detain the vehicle, vessel or aircraft.
- 18 (3) If an authorised officer (other than a member of a police force who
19 is in uniform) makes a requirement of a person under section 403
20 the authorised officer, unless it is impracticable to do so, must:
- 21 (a) in the case of a member of a police force—produce, for
22 inspection by that person, written evidence of the fact that he
23 or she is a member of that police force; or
- 24 (b) in any other case—produce his or her identity card for
25 inspection by that person;
- 26 and, if the authorised officer fails to do so, that person is not
27 obliged to comply with the requirement.
- 28 (4) A person must comply with a requirement made of the person
29 under section 403.
- 30 Penalty: 50 penalty units.

Section 405

1 **405 Access to premises**

2 (1) An authorised officer may, with the consent of the occupier of any
3 premises, enter the premises for the purpose of exercising the
4 powers of an authorised officer under section 406.

5 (2) If an authorised officer enters any premises under subsection (1),
6 he or she may exercise the powers of an authorised officer under
7 section 406.

8 (3) An authorised officer who enters premises under subsection (1)
9 must, if the occupier of the premises revokes his or her consent,
10 leave the premises forthwith, and is not entitled to exercise, or
11 continue to exercise, the powers of an authorised officer under
12 section 406 in relation to the premises.

13 **406 Powers of authorised officers**

14 (1) An authorised officer who boards a vehicle, vessel, aircraft or
15 platform under section 403, or enters premises under section 405
16 may:

17 (a) search the vehicle, vessel, aircraft, platform or premises, as
18 the case may be; and

19 (b) inspect, take extracts from, and make copies of, any
20 document that is, or that the authorised officer suspects on
21 reasonable grounds is, evidential material; and

22 (c) inspect, and take samples of, any other evidential material;
23 and

24 (d) exercise powers of seizure conferred on the authorised officer
25 by this Act.

26 (2) Each of the following things, including any such thing in electronic
27 form, is *evidential material*:

28 (a) a thing with respect to which an offence against this Act or
29 the regulations has been committed or is suspected, on
30 reasonable grounds, to have been committed;

Section 406

- 1 (b) a thing as to which there are reasonable grounds for
2 suspecting that it will afford evidence as to the commission
3 of an offence against this Act or the regulations;
4 (c) a thing as to which there are reasonable grounds for
5 suspecting that it is intended to be used for the purpose of
6 committing an offence against this Act or the regulations.
- 7 (3) For the purposes of exercising a power under subsection (1), an
8 authorised officer may break open any hold or compartment, or
9 any container or other receptacle (including any place that could be
10 used as a receptacle), on a vehicle, vessel, aircraft or platform or on
11 any premises.

Section 407

1

2 **Division 3—Monitoring of compliance**

3 **407 Monitoring powers**

4 For the purposes of this Division, each of the following powers is a
5 **monitoring power** in relation to particular premises:

- 6 (a) the power to search the premises;
- 7 (b) the power to take photographs (including a video recording),
8 or to make sketches, of the premises or of any substance or
9 thing at the premises;
- 10 (c) the power to inspect, examine and take samples of, any
11 substance or thing on or in the premises;
- 12 (d) the power to take extracts from, or make copies of, any
13 document, book or record on the premises;
- 14 (e) the power to take onto the premises any equipment or
15 material reasonably necessary for the purpose of exercising a
16 power referred to in paragraph (a), (b), (c) or (d).

17 **408 Monitoring searches with occupier's consent**

18 *Entry by consent*

- 19 (1) An authorised officer may, with the consent of the occupier of any
20 premises, enter the premises for the purpose of finding out whether
21 any or all of the provisions of this Act or the regulations are being
22 complied with.

23 *Entry for monitoring purposes*

- 24 (2) An authorised officer may only enter premises under subsection (1)
25 to the extent that it is reasonably necessary for the purpose of
26 finding out whether any or all of the provisions of this Act or the
27 regulations are being complied with.

1 *Exercise of monitoring powers*

- 2 (3) If an authorised officer enters premises under subsection (1), the
3 authorised officer may exercise monitoring powers in relation to
4 those premises.

5 *Exercise of seizure powers*

- 6 (4) If an authorised officer enters premises under subsection (1), the
7 authorised officer may exercise powers of seizure conferred by
8 section 445.

9 *Right to refuse to give consent*

- 10 (5) Before obtaining the consent of a person for the purposes of this
11 section, an authorised officer must tell the person that the person
12 may refuse to give consent.

13 *Consent must be voluntary*

- 14 (6) An entry by an authorised officer in consequence of the consent of
15 a person is not lawful unless the person voluntarily consented to
16 the entry.

17 *Production of identity card etc.*

- 18 (7) An authorised officer is not entitled to:
19 (a) enter premises under subsection (1); or
20 (b) exercise any powers referred to in subsection (3) or (4) in
21 relation to premises;
22 if the occupier of the premises has required the officer to produce
23 written identification for inspection by the occupier and:
24 (c) if the authorised officer is a member of a police force—the
25 officer fails to produce, for inspection by the occupier,
26 written evidence of the fact that he or she is a member of that
27 police force; or
28 (d) in any other case—the officer fails to produce his or her
29 identity card for inspection by the occupier.
-

Section 409

1 **409 Monitoring warrants**

2 *Application for monitoring warrant*

- 3 (1) An authorised officer may apply to a magistrate for a warrant
4 under this section in relation to particular premises. The warrant is
5 to be known as a ***monitoring warrant***.

6 *Issue of monitoring warrant*

- 7 (2) Subject to subsection (3), the magistrate may issue the monitoring
8 warrant if satisfied, by information on oath or affirmation, that it is
9 reasonably necessary that the authorised officer should have access
10 to the premises for the purpose of finding out whether any or all of
11 the provisions of this Act or the regulations are being complied
12 with.

13 *Information about grounds for issue of monitoring warrant*

- 14 (3) The magistrate must not issue the monitoring warrant unless the
15 authorised person or another person has given the magistrate, either
16 orally (on oath or affirmation) or by affidavit, such further
17 information as the magistrate requires about the grounds on which
18 the issue of the monitoring warrant is being sought.

19 *Terms of warrant*

- 20 (4) The monitoring warrant must:
21 (a) authorise an authorised officer named in the monitoring
22 warrant, with such assistance and by such force as is
23 necessary and reasonable, from time to time while the
24 monitoring warrant remains in force, to enter the premises
25 and exercise monitoring powers; and
26 (b) state whether an entry under the monitoring warrant is
27 authorised to be made at any time of the day or night or
28 during specified hours of the day or night; and

Section 410

- 1 (c) specify the day (not more than 6 months after the issue of the
2 monitoring warrant) on which the monitoring warrant ceases
3 to have effect; and
4 (d) state the purpose for which the monitoring warrant is issued.

5 *Seizure powers*

- 6 (5) If an authorised officer enters premises under a monitoring
7 warrant, he or she may exercise powers of seizure conferred by
8 section 445.

9 **410 Details of monitoring warrant to be given to occupier etc.**

- 10 (1) If a monitoring warrant in relation to premises is being executed
11 and the occupier of the premises, or another person who apparently
12 represents the occupier, is present at the premises, the authorised
13 officer named in the monitoring warrant must make available to
14 that person a copy of the monitoring warrant.
- 15 (2) The authorised officer named in the monitoring warrant must
16 identify himself or herself to that person at the premises.
- 17 (3) The copy of the monitoring warrant referred to in subsection (1)
18 need not include the signature of the magistrate or the seal of the
19 relevant court.

20 **411 Occupier entitled to be present during search**

- 21 (1) If a monitoring warrant in relation to premises is being executed
22 and the occupier of the premises, or another person who apparently
23 represents the occupier, is present at the premises, the person is,
24 subject to Part 1C of the *Crimes Act 1914*, entitled to observe the
25 search being conducted.
- 26 (2) The right to observe the search being conducted ceases if the
27 person impedes the search.
- 28 (3) This section does not prevent 2 or more areas of the premises being
29 searched at the same time.
-

Section 412

1 **412 Announcement before entry**

- 2 (1) The authorised officer named in a monitoring warrant must, before
3 any person enters premises under the monitoring warrant:
4 (a) announce that he or she is authorised to enter the premises;
5 and
6 (b) give any person at the premises an opportunity to allow entry
7 to the premises.
- 8 (2) An authorised officer is not required to comply with subsection (1)
9 if he or she believes on reasonable grounds that immediate entry to
10 the premises is required to ensure:
11 (a) the safety of a person (including an authorised officer); or
12 (b) that the effective execution of the monitoring warrant is not
13 frustrated.

1

2 **Division 4—Search warrants**

3 **413 When search warrants can be issued**

- 4 (1) A magistrate may issue a warrant authorising an authorised officer
5 to search premises if the magistrate is satisfied by information on
6 oath that there are reasonable grounds for suspecting that there is,
7 or there will be within the next 72 hours, any evidential material at
8 the premises.
- 9 (2) A magistrate may issue a warrant authorising an authorised officer
10 to carry out an ordinary search or a frisk search of a person if the
11 magistrate is satisfied by information on oath that there are
12 reasonable grounds for suspecting that the person has in his or her
13 possession, or will within the next 72 hours have in his or her
14 possession, any evidential material.
- 15 (3) For the purposes of this Act, *frisk search* means:
16 (a) a search of a person conducted by quickly running the hands
17 over the person's outer garments; and
18 (b) an examination of anything worn or carried by the person
19 that is conveniently and voluntarily removed by the person.
- 20 (4) If the authorised officer applying for the warrant suspects that, in
21 executing the warrant, it will be necessary to use firearms, the
22 authorised officer must state that suspicion, and the grounds for
23 that suspicion, in the information.
- 24 (5) If the application for the warrant is made under section 416, this
25 section applies as if subsections (1) and (2) referred to 48 hours
26 rather than 72 hours.
- 27 (6) If the applicant for a warrant is a member or special member of the
28 Australian Federal Police and has, at any time previously, applied
29 for a warrant relating to the same person or premises, the person
30 must state particulars of those applications and their outcome in the
31 information.

Section 414

414 Statements in warrants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

- (1) If a magistrate issues a warrant under section 413, the magistrate is to state in the warrant:
 - (a) the offence to which the warrant relates; and
 - (b) a description of the premises to which the warrant relates or the name or description of a person to whom it relates; and
 - (c) the kinds of evidential material that are to be searched for under the warrant; and
 - (d) the name of the authorised officer who is to be responsible for executing the warrant; and
 - (e) the period for which the warrant remains in force, which must not be more than 7 days; and
 - (f) whether the warrant may be executed at any time or only during particular hours.

- (2) The magistrate is also to state, in a warrant in relation to premises:
 - (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) evidential material in relation to another offence against this Act, where the other offence is an indictable offence;if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act or the regulations; and
 - (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or an officer assisting suspects on reasonable grounds that the person has

- 1 any evidential material or eligible seizable items in his or her
2 possession.
- 3 (3) For the purposes of this Act, *ordinary search* means a search of a
4 person or of articles in the possession of a person that may include:
5 (a) requiring the person to remove his or her overcoat, coat or
6 jacket and any gloves, shoes and hat; and
7 (b) an examination of those items.
- 8 (4) The magistrate is also to state, in a warrant in relation to a person:
9 (a) that the warrant authorises the seizure of a thing (other than
10 evidential material of the kind referred to in paragraph (1)(c))
11 found, in the course of the search, on or in the possession of
12 the person or in an aircraft, vehicle or vessel that the person
13 had operated or occupied at any time within 24 hours before
14 the search began, being a thing that the executing officer or
15 an officer assisting believes on reasonable grounds to be:
16 (i) evidential material in relation to an offence to which the
17 warrant relates; or
18 (ii) evidential material in relation to another offence against
19 this Act, where the other offence is an indictable
20 offence;
21 if the executing officer or an officer assisting believes on
22 reasonable grounds that seizure of the thing is necessary to
23 prevent its concealment, loss or destruction or its use in
24 committing an offence against this Act or the regulations;
25 and
26 (b) the kind of search of a person that the warrant authorises.
- 27 (5) Paragraph (1)(e) does not prevent the issue of successive warrants
28 in relation to the same premises or person.
- 29 (6) If the application for the warrant is made under section 416, this
30 section applies as if paragraph (1)(e) referred to 48 hours rather
31 than 7 days.

Section 415

1 **415 Powers of magistrate**

2 (1) A magistrate in a State or internal Territory may:

3 (a) issue a warrant in relation to premises or a person in that
4 State or Territory; or

5 (b) issue a warrant in relation to premises or a person in an
6 external Territory; or

7 (c) issue a warrant in relation to premises or a person in another
8 State or internal Territory (including the Jervis Bay Territory)
9 if he or she is satisfied that there are special circumstances
10 that make the issue of the warrant appropriate; or

11 (d) issue a warrant in relation to a person wherever the person is
12 in Australia or in an external Territory if he or she is satisfied
13 that it is not possible to predict where the person may be.

14 (2) A magistrate in New South Wales or the Australian Capital
15 Territory may issue a warrant in relation to premises or a person in
16 the Jervis Bay Territory.

17 **416 Warrants by telephone or other electronic means**

18 *Application*

19 (1) An authorised person may make an application to a magistrate for
20 a warrant by telephone, telex, facsimile or other electronic means:

21 (a) in an urgent case; or

22 (b) if the delay that would occur if an application were made in
23 person would frustrate the effective execution of the warrant.

24 *Voice communication*

25 (2) The magistrate may require communication by voice to the extent
26 that is practicable in the circumstances.

27 *Information*

28 (3) An application under this section must include all information as
29 required to be provided in an ordinary application for a warrant,

1 but the application may, if necessary, be made before the
2 information is sworn.

3 *Issue of warrant*

- 4 (4) If an application is made to a magistrate under this section and the
5 magistrate, after considering the information and having received
6 and considered such further information (if any) as the magistrate
7 required, is satisfied that:
- 8 (a) a warrant in the terms of the application should be issued
9 urgently; or
 - 10 (b) the delay that would occur if an application were made in
11 person would frustrate the effective execution of the warrant;
- 12 the magistrate may complete and sign the same form of warrant
13 that would be issued under section 413.

14 *Notification*

- 15 (5) If the magistrate decides to issue the warrant, the magistrate is to
16 inform the applicant, by telephone, telex, facsimile or other
17 electronic means, of the terms of the warrant and the day on which
18 and the time at which it was signed.

19 *Form of warrant*

- 20 (6) The applicant must then complete a form of warrant in terms
21 substantially corresponding to those given by the magistrate,
22 stating on the form the name of the magistrate and the day on
23 which and the time at which the warrant was signed.

24 *Completed form of warrant to be given to magistrate*

- 25 (7) The applicant must, not later than the day after the day of expiry of
26 the warrant or the day after the day on which the warrant was
27 executed, whichever is the earlier, give or transmit to the
28 magistrate:
- 29 (a) the form of warrant completed by the applicant; and

Section 417

- 1 (b) if the information referred to in subsection (3) was not
2 sworn—that information duly sworn.

3 *Attachment*

- 4 (8) The magistrate is to attach to the documents provided under
5 subsection (7) the form of warrant completed by the magistrate.

6 *Presumption*

- 7 (9) If:
8 (a) it is material, in any proceedings, for a court to be satisfied
9 that the exercise of a power under a warrant issued under this
10 section was duly authorised; and
11 (b) the form of warrant signed by the magistrate is not produced
12 in evidence;
13 the court is to assume, unless the contrary is proved, that the
14 exercise of the power was not duly authorised.

15 **417 The things that are authorised by a search warrant**

16 *Search of premises*

- 17 (1) A warrant that is in force in relation to premises authorises the
18 executing officer or an officer assisting:
19 (a) to enter the premises; and
20 (b) to search for and record fingerprints found at the premises
21 and to take samples of things found at the premises for
22 forensic purposes; and
23 (c) to search the premises for the kinds of evidential material
24 specified in the warrant, and to seize things of that kind
25 found at the premises; and
26 (d) to seize other things found at the premises in the course of
27 the search that the executing officer or an officer assisting
28 believes on reasonable grounds to be:
29 (i) evidential material in relation to an offence to which the
30 warrant relates; or
-

- 1 (ii) evidential material in relation to another offence against
2 this Act, where the other offence is an indictable
3 offence;
4 if the executing officer or an officer assisting believes on
5 reasonable grounds that seizure of the thing is necessary to
6 prevent its concealment, loss or destruction or its use in
7 committing an offence against this Act or the regulations;
8 and
9 (e) to seize other things found at the premises in the course of
10 the search that the executing officer or an officer assisting
11 believes on reasonable grounds to be eligible seizable items;
12 and
13 (f) if the warrant so allows—to conduct an ordinary search or a
14 frisk search of a person at or near the premises if the
15 executing officer or an officer assisting suspects on
16 reasonable grounds that the person has any evidential
17 material or eligible seizable items in his or her possession.

18 *Search of a person*

- 19 (2) A warrant that is in force in relation to a person authorises the
20 executing officer or an officer assisting:
21 (a) to search:
22 (i) the person as specified in the warrant and things found
23 in the possession of the person; and
24 (ii) any aircraft, vehicle or vessel that the person had
25 operated or occupied at any time within 24 hours before
26 the search began, for things specified in the warrant; and
27 (b) to:
28 (i) seize things of that kind; or
29 (ii) record fingerprints from things; or
30 (iii) take forensic samples from things;
31 found in the course of the search; and
32 (c) to seize other things found on or in the possession of the
33 person or in the aircraft, vehicle or vessel mentioned in
34 subparagraph (a)(ii) in the course of the search that the
-

Section 418

- 1 executing officer or an officer assisting believes on
2 reasonable grounds to be:
- 3 (i) evidential material in relation to an offence to which the
4 warrant relates; or
- 5 (ii) evidential material in relation to another offence against
6 this Act, where the other offence is an indictable
7 offence;
- 8 if the executing officer or an officer assisting believes on
9 reasonable grounds that seizure of the thing is necessary to
10 prevent its concealment, loss or destruction or its use in
11 committing an offence against this Act or the regulations;
12 and
- 13 (d) to seize other things found in the course of the search that the
14 executing officer or an officer assisting believes on
15 reasonable grounds to be eligible seizable items.

16 *Hours when search warrant may be executed*

- 17 (3) If the warrant states that it may be executed only during particular
18 hours, the warrant must not be executed outside those hours.

19 *Ordinary searches or frisk searches*

- 20 (4) If the warrant authorises an ordinary search or a frisk search of a
21 person, a search of the person different from that so authorised
22 must not be done.

23 *Seized items may be made available to other agencies*

- 24 (5) If things are seized under a warrant, the warrant authorises the
25 executing officer to make the things available to officers of other
26 agencies if it is necessary to do so for the purpose of investigating
27 or prosecuting an offence to which the things relate.

28 **418 Availability of assistance, and use of force, in executing a**
29 **warrant**

- 30 (1) In executing a warrant:
-

Section 419

- 1 (a) the executing officer may obtain such assistance as is
2 necessary and reasonable in the circumstances; and
3 (b) the executing officer, or an authorised officer who is assisting
4 in executing the warrant, may use such force against persons
5 and things as is necessary and reasonable in the
6 circumstances; and
7 (c) a person who is not an authorised officer, but who has been
8 authorised to assist in executing the warrant, may use such
9 force against things as is necessary and reasonable in the
10 circumstances.
- 11 (2) A person who is not an authorised officer must not take part in
12 searching or arresting a person.

13 **419 Details of warrant to be given to occupier etc.**

- 14 (1) If a warrant in relation to premises is being executed and the
15 occupier of the premises or another person who apparently
16 represents the occupier is present at the premises, the executing
17 officer or an officer assisting must make available to that person a
18 copy of the warrant.
- 19 (2) If a warrant in relation to a person is being executed, the executing
20 officer or an officer assisting must make available to that person a
21 copy of the warrant.
- 22 (3) If a person is searched under a warrant in relation to premises, the
23 executing officer or an officer assisting must show the person a
24 copy of the warrant.
- 25 (4) The executing officer must identify himself or herself to the person
26 at the premises or the person being searched, as the case may be.
- 27 (5) The copy of the warrant referred to in subsections (1) and (2) need
28 not include the signature of the magistrate who issued the warrant.

Section 420

1 **420 Specific powers available to person executing warrant**

- 2 (1) In executing a warrant in relation to premises, the executing officer
3 or an officer assisting may take photographs (including video
4 recordings) of the premises or of things at the premises:
5 (a) for a purpose incidental to the execution of the warrant; or
6 (b) if the occupier of the premises consents in writing.
- 7 (2) If a warrant in relation to premises is being executed, the executing
8 officer and all officers assisting may, if the warrant is still in force,
9 complete the execution of the warrant after all of them temporarily
10 cease its execution and leave the premises:
11 (a) for not more than one hour; or
12 (b) for a longer period if the occupier of the premises consents in
13 writing.
- 14 (3) The execution of a warrant that is stopped by an order of a court
15 may be completed if:
16 (a) the order is later revoked or reversed on appeal; and
17 (b) the warrant is still in force.

18 **421 Use of equipment to examine or process things**

- 19 (1) The executing officer or an officer assisting may bring to the
20 warrant premises any equipment reasonably necessary for the
21 examination or processing of things found at the premises in order
22 to determine whether they are things that may be seized under the
23 warrant.
- 24 (2) If:
25 (a) it is not practicable to examine or process the things at the
26 warrant premises; or
27 (b) the occupier of the premises consents in writing;
28 the things may be moved to another place so that the examination
29 or processing can be carried out in order to determine whether they
30 are things that may be seized under the warrant.

Section 422

- 1 (3) If things are moved to another place for the purpose of examination
2 or processing under subsection (2), the executing officer must, if it
3 is practicable to do so:
4 (a) inform the occupier of the address of the place and the time
5 at which the examination or processing will be carried out;
6 and
7 (b) allow the occupier or his or her representative to be present
8 during the examination or processing.
- 9 (4) The executing officer or an officer assisting may operate
10 equipment already at the warrant premises to carry out the
11 examination or processing of a thing found at the premises in order
12 to determine whether it is a thing that may be seized under the
13 warrant if the executing officer or an officer assisting believes on
14 reasonable grounds that:
15 (a) the equipment is suitable for the examination or processing;
16 and
17 (b) the examination or processing can be carried out without
18 damage to the equipment or thing.

19 **422 Use of electronic equipment at premises**

20 *Operation of equipment*

- 21 (1) The executing officer or an officer assisting may operate electronic
22 equipment at the premises to see whether evidential material is
23 accessible by doing so if he or she believes on reasonable grounds
24 that the operation of the equipment can be carried out without
25 damage to the equipment.

26 *Seizure etc.*

- 27 (2) If the executing officer or an officer assisting, after operating the
28 equipment, finds that evidential material is accessible by doing so,
29 he or she may:
30 (a) seize the equipment and any disk, tape or other associated
31 device; or

Section 422

- 1 (b) if the material can, by using facilities at the premises, be put
2 in documentary form—operate the facilities to put the
3 material in that form and seize the documents so produced; or
4 (c) if the material can be transferred to a disk, tape or other
5 storage device that:
6 (i) is brought to the premises; or
7 (ii) is at the premises and the use of which for the purpose
8 has been agreed to in writing by the occupier of the
9 premises;
10 operate the equipment or other facilities to copy the material
11 to the storage device and take the storage device from the
12 premises.

13 *Limitation on seizure*

- 14 (3) A person may seize equipment under paragraph (2)(a) only if:
15 (a) it is not practicable to put the material in document form as
16 mentioned in paragraph (2)(b) or to copy the material as
17 mentioned in paragraph (2)(c); or
18 (b) possession of the equipment by the occupier could constitute
19 an offence.

20 *Securing equipment*

- 21 (4) If the executing officer or an officer assisting believes on
22 reasonable grounds that:
23 (a) evidential material may be accessible by operating electronic
24 equipment at the premises; and
25 (b) expert assistance is required to operate the equipment; and
26 (c) if he or she does not take action under this subsection, the
27 material may be destroyed, altered or otherwise interfered
28 with;
29 he or she may do whatever is necessary to secure the equipment,
30 whether by locking it up, placing a guard or otherwise.

1 *Notice about securing equipment*

- 2 (5) The executing officer or an officer assisting must give notice to the
3 occupier of the premises of his or her intention to secure equipment
4 and of the fact that the equipment may be secured for up to 24
5 hours.

6 *Period for which equipment may be secured*

- 7 (6) The equipment may be secured:
8 (a) for a period not exceeding 24 hours; or
9 (b) until the equipment has been operated by the expert;
10 whichever happens first.

11 *Extension of period*

- 12 (7) If the executing officer or an officer assisting believes on
13 reasonable grounds that the expert assistance will not be available
14 within 24 hours, he or she may apply to a magistrate for an
15 extension of that period.

16 *Notice to occupier*

- 17 (8) The executing officer or an officer assisting must give notice to the
18 occupier of the premises of his or her intention to apply for an
19 extension, and the occupier is entitled to be heard in relation to the
20 application.

21 *Provisions relating to extensions*

- 22 (9) The provisions of this Division relating to the issue of warrants
23 apply, with such modifications as are necessary, to the issuing of
24 an extension.

25 **423 Compensation for damage to electronic equipment**

- 26 (1) If:
27 (a) damage is caused to equipment as a result of it being
28 operated as mentioned in section 421 or 422; and
-

Section 424

- 1 (b) the damage was caused as a result of:
2 (i) insufficient care being exercised in selecting the person
3 who was to operate the equipment; or
4 (ii) insufficient care being exercised by the person operating
5 the equipment;
6 compensation for the damage is payable to the owner of the
7 equipment.
- 8 (2) Compensation is payable out of money appropriated by the
9 Parliament for the purpose.
- 10 (3) In determining the amount of compensation payable, regard is to
11 be had to whether the occupier of the premises and his or her
12 employees and agents, if they were available at the time, had
13 provided any warning or guidance as to the operation of the
14 equipment that was appropriate in the circumstances.

15 **424 Copies of seized things to be provided**

- 16 (1) Subject to subsection (2), if an authorised officer seizes, under a
17 warrant relating to premises:
18 (a) a document, film, computer file or other thing that can be
19 readily copied; or
20 (b) a storage device the information in which can be readily
21 copied;
22 the authorised officer must, if requested to do so by the occupier of
23 the premises or another person who apparently represents the
24 occupier and who is present when the warrant is executed, give a
25 copy of the thing or the information to that person as soon as
26 practicable after the seizure.
- 27 (2) Subsection (1) does not apply if:
28 (a) the thing that has been seized was seized under paragraph
29 422(2)(b) or (c); or
30 (b) possession of the document, film, computer file, thing or
31 information by the occupier could constitute an offence.

1 **425 Occupier entitled to be present during search**

- 2 (1) If a warrant in relation to premises is being executed and the
3 occupier of the premises or another person who apparently
4 represents the occupier is present at the premises, the person is,
5 subject to Part 1C of the *Crimes Act 1914*, entitled to observe the
6 search being conducted.
- 7 (2) The right to observe the search being conducted ceases if the
8 person impedes the search.
- 9 (3) This section does not prevent 2 or more areas of the premises being
10 searched at the same time.

11 **426 Receipts for things seized under warrant**

- 12 (1) If a thing is seized under a warrant or moved under subsection
13 421(2), the executing officer or an officer assisting must provide a
14 receipt for the thing.
- 15 (2) If 2 or more things are seized or moved, they may be covered in
16 the one receipt.

17 **427 Restrictions on personal searches**

18 A warrant can not authorise a strip search or a search of a person's
19 body cavities.

20 **428 When a thing is in the possession of a person**

21 This Division applies to a person (the *possessor*) who has a thing
22 under his or her control in any place (whether for the use or benefit
23 of the possessor or of another person), even if another person has
24 the actual possession or custody of the thing, as if the possessor has
25 possession of the thing.

Section 429

1

2

Division 5—Stopping and searching aircraft, vehicles or vessels

3

4

429 Searches of aircraft, vehicles or vessels without warrant in emergency situations

5

6

(1) This section applies if an authorised officer suspects, on reasonable grounds, that:

7

8

(a) evidential material in relation to an indictable offence against this Act is in or on an aircraft, vehicle or vessel; and

9

10

(b) it is necessary to exercise a power under subsection (2) in order to prevent the thing from being concealed, lost or destroyed; and

11

12

13

(c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.

14

15

16

(2) The authorised officer may:

17

(a) stop and detain the aircraft, vehicle or vessel; and

18

(b) search the aircraft, vehicle or vessel and any container in or on it, for the evidential material; and

19

20

(c) seize the evidential material if he or she finds it there.

21

(3) If, in the course of searching for the evidential material, the authorised officer finds any other evidential material in relation to any other offence against this Act or the regulations, he or she may seize that material if he or she suspects, on reasonable grounds, that:

22

23

24

25

26

(a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and

27

28

(b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.

29

30

(4) When an authorised officer exercises a power under this section, he or she:

31

- 1 (a) may use such assistance as is necessary; and
2 (b) must search the aircraft, vehicle or vessel in a public place or
3 in some other place to which members of the public have
4 ready access; and
5 (c) must not detain the aircraft, vehicle or vessel for longer than
6 is necessary and reasonable to search it and any container
7 found in or on it; and
8 (d) may use such force as is necessary and reasonable in the
9 circumstances, but must not damage the aircraft, vehicle or
10 vessel or any container found in or on it by forcing open a
11 part of the aircraft, vehicle or vessel or container unless:
12 (i) the person (if any) apparently in charge of the aircraft,
13 vehicle or vessel has been given a reasonable
14 opportunity to open that part or container; or
15 (ii) it is not possible to give that person such an opportunity.

Section 430

1

2 **Division 6—Arrest and related matters**

3 **430 Powers of arrest**

- 4 (1) An authorised officer may, without warrant, arrest any person, if
5 the authorised officer believes on reasonable grounds that:
6 (a) the person is committing or has committed an offence against
7 this Act or the regulations; and
8 (b) proceedings against the person by summons would not be
9 effective.
- 10 (2) If an authorised officer (other than a member of a police force who
11 is in uniform) arrests a person under subsection (1), the authorised
12 officer must:
13 (a) in the case of a member of a police force—produce, for
14 inspection by that person, written evidence of the fact that he
15 or she is a member of that police force; and
16 (b) in any other case—produce his or her identity card for
17 inspection by that person.
- 18 (3) If a person is arrested under subsection (1), an authorised officer
19 must without unreasonable delay bring the person, or cause the
20 person to be brought, before a Justice of the Peace or other proper
21 authority to be dealt with in accordance with law.

22 **431 Power to conduct a frisk search of an arrested person**

- 23 An authorised officer who arrests a person for an offence against
24 this Act or the regulations, or who is present at such an arrest, may,
25 if the authorised officer suspects on reasonable grounds that it is
26 prudent to do so in order to ascertain whether the arrested person is
27 carrying any eligible seizable items:
28 (a) conduct a frisk search of the arrested person at or soon after
29 the time of arrest; and
30 (b) seize any eligible seizable items found as a result of the
31 search.
-

1 **432 Power to conduct an ordinary search of an arrested person**

2 An authorised officer who arrests a person for an offence against
3 this Act or the regulations, or who is present at such an arrest, may,
4 if the authorised officer suspects on reasonable grounds that the
5 arrested person is carrying:

6 (a) evidential material in relation to that or another offence
7 against this Act or the regulations; or

8 (b) an eligible seizable item;

9 conduct an ordinary search of the arrested person at or soon after
10 the time or arrest, and seize any such thing found as a result of the
11 search.

12 **433 Power to conduct search of arrested person's premises**

13 An authorised officer who arrests a person at premises for an
14 offence against this Act or the regulations, or who is present at
15 such an arrest, may seize a thing in plain view at those premises
16 that the authorised officer believes on reasonable grounds to be:

17 (a) evidential material in relation to that or another offence
18 against this Act or the regulations; or

19 (b) an eligible seizable item.

Section 434

1

2 **Division 7—Miscellaneous provisions about searches, entry**
3 **to premises, warrants etc.**

4 **434 Conduct of ordinary searches and frisk searches**

5 An ordinary search or a frisk search of a person under this Part
6 must, if practicable, be conducted by a person of the same sex as
7 the person being searched.

8 **435 Announcement before entry**

- 9 (1) An authorised officer must, before any person enters premises
10 under a warrant or to arrest a person under this Act:
11 (a) announce that he or she is authorised to enter the premises;
12 and
13 (b) give any person at the premises an opportunity to allow entry
14 to the premises.
- 15 (2) An authorised officer is not required to comply with subsection (1)
16 if he or she believes on reasonable grounds that immediate entry to
17 the premises is required to ensure:
18 (a) the safety of a person (including an authorised officer); or
19 (b) that the effective execution of the warrant or the arrest is not
20 frustrated.

21 **436 Offence of making false statements in warrants**

22 A person is guilty of an offence punishable upon conviction by
23 imprisonment for a term not exceeding 2 years if the person:
24 (a) makes a statement in an application for a warrant; and
25 (b) does so knowing the statement is false or misleading in a
26 material particular.

27 **437 Offences relating to telephone warrants**

28 A person must not:

Section 438

- 1 (a) state in a document that purports to be a form of warrant
2 under section 416 the name of a magistrate unless the
3 magistrate issued the warrant; or
- 4 (b) state on a form of warrant under that section a matter that, to
5 the person's knowledge, departs in a material particular from
6 the form authorised by the magistrate; or
- 7 (c) purport to execute, or present to another person, a document
8 that purports to be a form of warrant under that section that
9 the person knows:
- 10 (i) has not been approved by a magistrate under that
11 section; or
- 12 (ii) departs in a material particular from the terms
13 authorised by a magistrate under that section; or
- 14 (d) give to a magistrate a form of warrant under that section that
15 is not the form of warrant that the person purported to
16 execute.

17 Penalty: Imprisonment for 2 years.

18 **438 Retention of things which are seized**

- 19 (1) Subject to any contrary order of a court, if a person seizes a thing
20 under Division 4, 5 or 6 the person must return it if:
- 21 (a) the reason for its seizure no longer exists or it is decided that
22 it is not to be used in evidence; or
- 23 (b) if the thing was seized under section 429:
- 24 (i) the reason for its seizure no longer exists or it is decided
25 that it is not to be used in evidence; or
- 26 (ii) the period of 60 days after its seizure ends;
27 whichever first occurs;
- 28 unless the thing is forfeited or forfeitable to the Commonwealth or
29 is the subject of a dispute as to ownership.
- 30 (2) If a thing is seized by an authorised officer under section 429, at
31 the end of the 60 days specified in subsection (1), he or she must
32 take reasonable steps to return the thing to the person from whom it

Section 439

- 1 was seized (or to the owner if that person is not entitled to possess
2 it) unless:
- 3 (a) proceedings in respect of which the thing may afford
4 evidence were instituted before the end of the 60 days and
5 have not been completed (including an appeal to a court in
6 relation to those proceedings); or
- 7 (b) the authorised officer may retain the thing because of an
8 order under section 439; or
- 9 (c) the authorised officer is otherwise authorised (by a law, or an
10 order of a court, of the Commonwealth or of a State or
11 Territory) to retain, destroy or dispose of the thing.

12 **439 Magistrate may permit a thing to be retained**

- 13 (1) If a thing is seized under section 429, and:
- 14 (a) before the end of 60 days after the seizure; or
- 15 (b) before the end of a period previously specified in an order of
16 a magistrate under this section;
- 17 proceedings in respect of which the thing may afford evidence
18 have not commenced, the authorised officer may apply to a
19 magistrate for an order that he or she may retain the thing for a
20 further period.
- 21 (2) If the magistrate is satisfied that it is necessary for the authorised
22 officer to continue to retain the thing:
- 23 (a) for the purposes of an investigation as to whether an offence
24 against this Act or the regulations has been committed; or
- 25 (b) to enable evidence of an offence against this Act or the
26 regulations to be secured for the purposes of a prosecution;
- 27 the magistrate may order that the authorised officer may retain the
28 thing for a period specified in the order.
- 29 (3) Before making the application, the authorised officer must:
- 30 (a) take reasonable steps to discover who has an interest in the
31 retention of the thing; and

Section 440

- 1 (b) if it is practicable to do so, notify each person who the
2 authorised officer believes to have such an interest in the
3 proposed application.
- 4 (4) A function of making an order conferred on a magistrate by this
5 section is conferred on the magistrate in a personal capacity and
6 not as a court or a member of a court.
- 7 (5) Without limiting the generality of subsection (4), an order made by
8 a magistrate under this section has effect only by virtue of this Act
9 and is not taken, by implication, to be made by a court.
- 10 (6) A magistrate performing a function of, or connected with, making
11 an order under this section has the same protection and immunity
12 as if he or she were performing that function as, or as a member of,
13 a court (being the court of which the magistrate is a member).
- 14 (7) The Governor-General may make arrangements with the Governor
15 of a State, the Chief Minister of the Australian Capital Territory,
16 the Administrator of the Northern Territory or the Administrator of
17 Norfolk Island for the performance, by all or any of the persons
18 who from time to time hold office as magistrates in that State or
19 Territory, of the function of making orders under this section.

440 Law relating to legal professional privilege not affected

20
21 This Part does not affect the law relating to legal professional
22 privilege.

441 Other laws about search, arrest etc. not affected

- 23
24 (1) This Part is not intended to limit or exclude the operation of
25 another law of the Commonwealth relating to:
26 (a) the search of persons or premises; or
27 (b) arrest and related matters; or
28 (c) the stopping, detaining or searching of aircraft, vehicles or
29 vessels; or
30 (d) the seizure of things.
-

Section 442

- 1 (2) To avoid doubt, it is declared that even though another law of the
2 Commonwealth provides power to do one or more of the things
3 referred to in subsection (1), a similar power conferred by this Part
4 may be used despite the existence of the power under the other
5 law.

6 **442 Persons to assist authorised officers**

- 7 (1) Subject to subsection (5), the owner, or person in charge:
8 (a) of any vehicle, vessel, aircraft or platform boarded by an
9 authorised officer under section 403; or
10 (b) of any premises entered by an authorised officer under
11 section 405;
12 must, if requested by an authorised officer to do so, provide
13 reasonable assistance to the authorised officer in the performance
14 of the functions, or carrying out of the duties, or the exercise of the
15 powers, conferred on the authorised officer under this Act.

- 16 (2) A person must not contravene subsection (1).

17 Penalty: Imprisonment for 12 months.

- 18 (3) Subject to subsection (5), the owner, or the person in charge, of:
19 (a) premises entered under a warrant; or
20 (b) an aircraft, vehicle or vessel stopped under section 429;
21 must, if requested by an authorised officer to do so, provide
22 reasonable assistance to the authorised officer in the performance
23 of the functions, or carrying out of the duties, or the exercise of the
24 powers, conferred on the authorised officer under this Act.

- 25 (4) A person must not contravene subsection (3).

26 Penalty: Imprisonment for 12 months.

- 27 (5) Where an authorised officer (other than a member of a police force
28 who is in uniform) makes a request of a person under this section,
29 the authorised officer must:

Section 442

- 1 (a) in the case of a member of a police force—produce, for
2 inspection by that person, written evidence of the fact that he
3 or she is a member of that police force; or
4 (b) in any other case—produce his or her identity card for
5 inspection by that person;
6 and, if the authorised officer fails to do so, that person is not
7 obliged to comply with the request.

Section 443

1

2 **Division 8—Power to search goods, baggage etc.**

3 **443 Power to search goods, baggage etc.**

- 4 (1) This section applies to any goods that are to be, are being, or have
5 been, taken on or off a ship that voyages, or an aircraft that flies,
6 between:
7 (a) a place in Australia and a place outside Australia; or
8 (b) a place in an external Territory and a place outside that
9 Territory.
- 10 (2) If an authorised officer believes, on reasonable grounds that goods
11 are goods to which this section applies, he or she may:
12 (a) examine the goods; or
13 (b) if the goods are baggage—open and search the baggage; or
14 (c) if the goods are in a container—open and search the
15 container.
- 16 (3) An authorised officer may ask a person who owns, is carrying or is
17 otherwise associated with, or appears to the authorised officer to be
18 associated with, goods to which this section applies any question in
19 respect of the goods.
- 20 (4) A person must not refuse or fail to answer a question put to the
21 person under subsection (3).
- 22 Penalty: 60 penalty units.
- 23 (5) In this Act:
- 24 **baggage** includes any parcel or other goods that:
25 (a) a passenger; or
26 (b) the master, a mate, an engineer or any other member of the
27 crew of a ship; or
28 (c) the pilot or any other member of the crew of an aircraft;
29 has had with him or her on the ship or aircraft.

1

goods includes baggage.

Section 444

1

2 **Division 9—Power to ask for names and addresses**

3 **444 Authorised person may ask for person’s name and address**

4 (1) An authorised officer may ask an individual to tell the authorised
5 officer the individual’s name and address if the authorised officer
6 has reasonable grounds to suspect that the individual has been
7 involved in the commission of an offence against this Act or the
8 regulations.

9 (2) Subject to subsection (4), a person must not refuse or fail to
10 comply with a request under subsection (1).

11 Penalty: 10 penalty units.

12 (3) A person is guilty of an offence punishable upon conviction by a
13 fine not exceeding 10 penalty units if the person:

14 (a) in purported compliance with a request under subsection (1),
15 gives a name and address; and

16 (b) does so knowing the name or address is false or misleading.

17 (4) If an authorised officer makes a request of a person under
18 subsection (1), the person is not required to comply with the
19 request unless:

20 (a) if the authorised officer is a member of a police force—he or
21 she produces, for inspection by the person, written evidence
22 of the fact that he or she is a member of that police force; or

23 (b) in any other case—the authorised officer produces his or her
24 identity card for inspection by the person.

1

2 **Division 10—Seizure and forfeiture etc.**

2

3 **Subdivision A—Seizure of goods**

3

4 **445 Seizure of goods**

4

5 (1) This section applies to any goods, including vehicles, vessels,
6 aircraft, platforms, documents and organisms.

5

6

7 (2) An authorised officer may seize goods if he or she has reasonable
8 grounds to suspect that:

7

8

9 (a) the goods have been used or otherwise involved in the
10 commission of an offence against this Act or the regulations;

9

10

11

or

12 (b) the goods will afford evidence of the commission of an
13 offence against this Act or the regulations.

12

13

14 **446 Retention of goods that have been seized**

14

15 (1) Goods seized under section 445 may be retained until:

15

16 (a) the end of the period of 60 days after the seizure or the end of
17 such extended period as is, or such extended periods as are,
18 determined under subsection (3); or

16

17

18

19

(b) if:

20

21

22

23

24

(i) proceedings for an offence against this Act or the
regulations are instituted within that period; and

(ii) the goods may have been used or otherwise involved in
the commission of the offence or the goods may afford
evidence of the commission of the offence;

25 the proceedings (including any appeal to a court in relation to those
26 proceedings) are terminated.

25

26

27 (2) An authorised officer may apply to a magistrate for an extension of
28 the period during which the authorised officer is entitled to retain
29 particular goods seized under section 445.

27

28

29

Section 447

- 1 (3) If the magistrate is satisfied that the retention of the goods for an
2 extended period is warranted, the magistrate may make an order
3 extending the period during which the goods may be retained. The
4 maximum period of an individual extension is 30 days.
- 5 (4) Subsection (3) does not prevent a magistrate from granting 2 or
6 more successive extensions under that subsection of the period
7 during which particular goods may be retained.
- 8 (5) A function of making an order conferred on a magistrate by
9 subsection (3) is conferred on the magistrate in a personal capacity
10 and not as a court or a member of a court.
- 11 (6) Without limiting the generality of subsection (5), an order made by
12 a magistrate under subsection (3) has effect only by virtue of this
13 Act and is not taken, by implication, to be made by a court.
- 14 (7) A magistrate performing a function of, or connected with, making
15 an order under subsection (3) has the same protection and
16 immunity as if he or she were performing that function as, or as a
17 member of, a court (being the court of which the magistrate is a
18 member).
- 19 (8) The Governor-General may make arrangements with the Governor
20 of a State, the Chief Minister for the Australian Capital Territory,
21 the Administrator of the Northern Territory or the Administrator of
22 Norfolk Island for the performance, by all or any of the persons
23 who from time to time hold office as magistrates in that State or
24 Territory, of the function of making orders under subsection (3).

25 **447 Disposal of goods if there is no owner or owner cannot be**
26 **located**

27 If:

- 28 (a) goods are seized under section 445; and
29 (b) apart from this section, the Commonwealth is required to
30 return the goods to the owner; and

- 1 (c) there is no owner or the Secretary cannot, despite making
2 reasonable efforts, locate the owner;
3 the Secretary may dispose of the goods in such manner as the
4 Secretary thinks appropriate.

5 **448 Release of goods that have been seized**

6 The Secretary may authorise goods seized under section 445 or
7 anything in, on or attached to such goods to be released to their
8 owner, or to the person from whose possession they were seized,
9 either:

- 10 (a) unconditionally; or
11 (b) on such conditions as the Secretary thinks fit (including
12 conditions about the giving of security for giving payment of
13 their value if they are forfeited).

14 **Subdivision B—Immediate disposal of seized items**

15 **449 Immediate disposal of seized items**

- 16 (1) If:
17 (a) a thing is seized under this Division; and
18 (b) it is reasonably likely that the retention of the thing would:
19 (i) constitute a serious threat to the environment; or
20 (ii) constitute a serious threat to the continued existence, in
21 the wild, of a particular species of animal or of a
22 particular species of plant; or
23 (iii) result in the introduction of an alien species that
24 represents a threat to ecosystems, habitats or other
25 species; or
26 (iv) constitute a danger to public health; or
27 (v) in the case of a live organism—constitute a significant
28 threat to the health of the organism;
29 the Secretary may cause the thing to be dealt with in such manner
30 as the Secretary considers appropriate (including the destruction of
31 the thing).
-

Section 450

- 1 (2) Subject to subsection (3), if a thing is dealt with in accordance with
2 subsection (1), the Secretary must give to:
3 (a) the owner of the thing; or
4 (b) the person who had possession, custody or control of the
5 thing immediately before it was seized;
6 a written notice:
7 (c) identifying the thing; and
8 (d) stating that the thing has been seized under this Division and
9 giving the reason for the seizure; and
10 (e) stating that the thing has been dealt with under subsection (1)
11 and specifying the manner in which it has been so dealt with
12 and the reason for doing so; and
13 (f) setting out the terms of subsection (4).
14 The notice must be given as soon as practicable after the thing is so
15 dealt with.
- 16 (3) The Secretary need not give a notice under subsection (2) about a
17 thing if, after making such inquiries as the Secretary thinks
18 appropriate, the Secretary does not, within 20 days after dealing
19 with the thing, have sufficient information to enable the notice to
20 be given.
- 21 (4) If a thing is dealt with in accordance with subsection (1), the owner
22 of the thing may bring an action against the Commonwealth in a
23 court of competent jurisdiction for the recovery of the market value
24 of the thing at the time it was so dealt with. The action must be
25 brought on the ground that the thing was not used or otherwise
26 involved in the commission of an offence against this Act or the
27 regulations.

Subdivision C—Court-ordered forfeiture

450 Court-ordered forfeiture

- 30 (1) If a court convicts a person of an offence against this Act or the
31 regulations, the court may order the forfeiture to the

1 Commonwealth of any thing used or otherwise involved in the
2 commission of the offence.

3 (2) A court may make an order under subsection (1) even if the thing
4 has been seized under this Act.

5 **Subdivision D—Dealings in forfeited items**

6 **451 Dealings in forfeited items**

7 (1) A thing forfeited to the Commonwealth under this Act becomes the
8 property of the Commonwealth.

9 (2) A thing forfeited to the Commonwealth under this Act is to be
10 dealt with in such manner as the Secretary considers appropriate.

11 (3) Without limiting subsection (2), the Secretary may sell a thing
12 forfeited to the Commonwealth under this Act.

13 **Subdivision E—Delivery of forfeited items to the**
14 **Commonwealth**

15 **452 Delivery of forfeited items to the Commonwealth**

16 (1) If:
17 (a) a thing is forfeited to the Commonwealth under this Act; and
18 (b) the thing has not been dealt with under section 451; and
19 (c) the thing is in the possession, custody or control of a person
20 other than:
21 (i) the Commonwealth; or
22 (ii) an agency of the Commonwealth;
23 the person must deliver the thing to the Secretary.

24 (2) A person must not contravene subsection (1).

25 Penalty: Imprisonment for 2 years.

Section 453

1 **Subdivision F—Keeping of organisms that have been seized**

2 **453 Keeping of organisms retained under this Part**

3 If a person is authorised under this Part to retain an organism, the
4 person may do so by causing the organism to be taken to, and kept
5 at, a place approved by the Secretary for the purpose of keeping
6 organisms seized under this Division.

7 **454 Recovery of costs of storing or keeping organisms**

- 8 (1) If an organism is seized under this Division, the owner is liable to
9 pay to the Commonwealth an amount equal to the sum of the
10 following costs:
- 11 (a) reasonable costs incurred by the Commonwealth in relation
12 to the custody of the organism;
 - 13 (b) reasonable costs incurred by the Commonwealth in
14 transporting the organism;
 - 15 (c) reasonable costs incurred by the Commonwealth in
16 maintaining the organism.
- 17 (2) If:
- 18 (a) an organism is seized under this Division; and
 - 19 (b) the organism is disposed of;
- 20 the owner is liable to pay to the Commonwealth an amount equal
21 to the reasonable costs incurred by the Commonwealth in
22 disposing of the organism.
- 23 (3) An amount payable by a person under this section is a debt due by
24 the person to the Commonwealth.
- 25 (4) An amount payable by a person to the Commonwealth under this
26 section may be recovered by action in a court of competent
27 jurisdiction.
- 28 (5) The Secretary may remit an amount payable by a person under this
29 section.

- 1 (6) In addition to its effect apart from this subsection, this section also
2 has the effect it would have if a liability under this section were, by
3 express provision, confined to the case of an organism that:
4 (a) is forfeited to the Commonwealth under this Act; or
5 (b) would have been forfeited to the Commonwealth under this
6 Act if it had not been disposed of.

7 **Subdivision G—Rescuing goods**

8 **455 Rescuing goods**

- 9 A person is guilty of an offence punishable upon conviction by
10 imprisonment for a term not exceeding 2 years if:
11 (a) the person rescues any goods; and
12 (b) the goods have been, or are about to be, seized under this
13 Act.

14 **456 Breaking or destroying goods or documents to prevent seizure**
15 **etc.**

- 16 (1) A person must not:
17 (a) stave, break or destroy any goods in order to prevent the
18 seizure of goods, the securing of goods, or the proof of any
19 offence under this Act; or
20 (b) destroy any documents relating to any goods in order to
21 prevent the seizure of goods, the securing of goods, or the
22 proof of any offence under this Act.
- 23 Penalty: Imprisonment for 2 years.
- 24 (2) This section applies to vehicles, vessels, aircraft, platforms,
25 documents and organisms in the same way as it applies to goods.

1

2 **Division 11—Powers of pursuit**

3 **457 Power to pursue persons etc.**

4

(1) An authorised officer may exercise in relation to vessels (other than Australian vessels) and foreign nationals in any place (except the territorial sea of another country) a power conferred on the authorised officer under section 403, 406 or 430 if:

5

6

7

8

9

10

11

12

13

14

(a) one or more authorised officers (whether or not including the authorised officer exercising the power) have pursued the person or vessel from a place within the Australian jurisdiction to such a place; and

(b) the pursuit was not terminated or interrupted at any time before the authorised officer concerned arrived at such a place with a view to exercising that power.

15

16

17

18

(2) For the purposes of paragraph (1)(b), a pursuit of a person or vessel is not taken to be terminated or interrupted only because the authorised officer or officers concerned lose sight of the person or vessel.

19

20

(3) A reference in subsection (2) to losing sight of a person or vessel includes losing output from a radar or other sensing device.

1

2 **Division 12—Environmental audits**

3 **458 Directed environmental audits**

- 4 (1) The Minister may, by written notice given to the holder of an
5 environmental authority, require the holder to carry out an
6 environmental audit if the Minister believes or suspects on
7 reasonable grounds that the holder has contravened, or is likely to
8 contravene, a condition of the authority.
- 9 (2) The notice must specify:
- 10 (a) the matters to be covered by the audit; and
11 (b) the form of the audit report and the kinds of particulars it is
12 to contain; and
13 (c) the date on or before which the report must be given to the
14 Minister.
- 15 (3) Without limiting the matters that may be specified under paragraph
16 (2)(a), those matters may include all or any of the following:
- 17 (a) an evaluation of the nature of the environment that is or will
18 be affected by the holder's activities; and
19 (b) an assessment of the risks to the environment resulting from
20 the activities; and
21 (c) an assessment of the holder's existing capacity to comply
22 with the authority and the requirements of this Act and the
23 regulations in carrying on the activities; and
24 (d) an assessment of what the holder will need to do, or continue
25 to do, so to comply.
- 26 (4) For the purposes of this Act, an *environmental authority* is:
- 27 (a) an approval under Part 9; or
28 (b) a permit issued under Chapter 5.

Section 459

1 **459 Appointment of auditor and carrying out of audit**

2 (1) If the Minister gives the holder of an environmental authority a
3 notice under section 458, the holder must appoint an environmental
4 auditor and arrange for the auditor to carry out an environmental
5 audit in accordance with the notice.

6 (2) The holder of an environmental authority must not contravene
7 subsection (1).

8 Civil penalty: 500 penalty units.

9 (3) The holder must not appoint an officer or employee of the holder to
10 be an environmental auditor.

11 (4) The holder must not appoint a person to be an environmental
12 auditor unless the Minister has approved the person for such
13 appointment before the appointment is made.

14 (5) An appointment of a person as an environmental auditor made
15 otherwise than in accordance with subsections (3) and (4) has no
16 effect.

17 **460 Nature of directed environmental audit**

18 (1) If:

19 (a) an environmental auditor carries out a directed environmental
20 audit; and

21 (b) in the course of carrying out the audit, the auditor does not
22 deal with a particular matter; and

23 (c) the matter is specified in the Minister's notice under section
24 458 as a matter that is to be covered by the audit;

25 the auditor is guilty of an offence, punishable on conviction by a
26 fine not exceeding 30 penalty units.

27 Note: Chapter 2 of the *Criminal Code* sets out the general principles of
28 criminal responsibilities.

29 (2) If:

Section 461

- 1 (a) an environmental auditor carries out a directed environmental
2 audit; and
3 (b) in the course of carrying out the audit, the auditor conceals,
4 or does not take into account, any information or document;
5 and
6 (c) the information or document is relevant to the audit;
7 the auditor is guilty of an offence punishable on conviction by
8 imprisonment for not more than 6 months.

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

11 Note 2: Subsection 4B(2) of the *Crimes Act 1914* lets a court that convicts an
12 individual of an offence impose a fine instead of, or as well as,
13 imprisonment. The maximum fine (in penalty units) the court can
14 impose is 5 times the maximum term of imprisonment (in months).

- 15 (3) In carrying out a directed environmental audit, the environmental
16 auditor may, if:
17 (a) an environmental audit (including an environmental audit
18 carried out in accordance with a condition of the relevant
19 authority) was completed within the last preceding 2 years;
20 and
21 (b) the auditor is satisfied that the previous audit is still relevant;
22 have regard to the results of the previous audit.
- 23 (4) For the purposes of this Division, a *directed environmental audit*
24 is an audit required by a notice under section 458.

25 **461 Audit reports**

- 26 (1) After completing a directed environmental audit, the environmental
27 auditor must prepare, and give the holder of the relevant
28 environmental authority, a written report setting out the results of
29 the audit.
- 30 (2) The holder must give the report to the Minister:
31 (a) on or before the date specified by the Minister under
32 paragraph 458(2)(c); or

Section 462

1 (b) on or before such later date as the Minister, on application by
2 the holder, determines.

3 (3) If the holder fails to comply with subsection (2), the holder is
4 guilty of an offence, punishable on conviction by a fine not
5 exceeding 50 penalty units.

6 Note: Chapter 2 of the *Criminal Code* sets out the general principles of
7 criminal responsibilities.

8 (4) If:

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

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

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

16 Note 2: Subsection 4B(2) of the *Crimes Act 1914* lets a court that convicts an
17 individual of an offence impose a fine instead of, or as well as,
18 imprisonment. The maximum fine (in penalty units) the court can
19 impose is 5 times the maximum term of imprisonment (in months).

20 **462 Directed environmental audits do not affect other audit**
21 **obligations**

22 This Division does not affect any obligation of a holder of an
23 environmental authority to carry out an environmental audit in
24 accordance with a condition of the authority.

1

2 **Division 13—Conservation orders**

2

3 **Subdivision A—Simplified outline**

3

4 **463 Simplified outline of this Division**

4

5 The following is a simplified outline of this Division:

5

6 The Minister may make conservation orders controlling activities,
7 and requiring specified people to take specified actions, in
8 Commonwealth areas to protect listed threatened species or
9 ecological communities.

6

7

8

9

10 A person who contravenes a conservation order commits an
11 offence.

10

11

12 Before the Minister makes a conservation order, he or she must
13 consult various Commonwealth agencies.

12

13

14 The Secretary must publicise conservation orders, and may give
15 assistance to a person to comply with a conservation order.

14

15

16 **Subdivision B—Making and reviewing conservation orders**

16

17 **464 Minister may make conservation orders**

17

18 *Making conservation orders*

18

19 (1) The Minister may make a written order (a *conservation order*):

19

20 (a) prohibiting or restricting specified activities on or in:

20

21 (i) all Commonwealth areas; or

21

22 (ii) specified Commonwealth areas; or

22

23 (b) requiring specified persons to take specified action on or in:

23

24 (i) all Commonwealth areas; or

24

25 (ii) specified Commonwealth areas.

25

Section 465

1 Note: Section 470 makes contravening a conservation order an offence.

2 *Prerequisite to making conservation order*

3 (2) The Minister may only make a conservation order if he or she
4 reasonably believes that it is necessary to make the order to protect
5 a listed threatened species or a listed threatened ecological
6 community.

7 *Minister must consider economic and social matters*

8 (3) In considering whether to make a conservation order, the Minister
9 must be satisfied that making the order is justified, having regard to
10 economic and social considerations that are consistent with the
11 principles of ecologically sustainable development.

12 *Minister must consult before making conservation order*

13 (4) Before making a conservation order, the Minister:
14 (a) must seek the Secretary's advice on whether it should be
15 made; and
16 (b) must consult each Commonwealth agency that may be
17 affected by the order, and any other Commonwealth agency
18 the Minister thinks appropriate, unless delay in making the
19 order would result in significant, irreparable damage to a
20 listed threatened species or listed threatened ecological
21 community.

22 **465 Duration of conservation orders**

23 (1) A conservation order comes into force:
24 (a) if a commencement day is specified in the order—on that
25 day; or
26 (b) otherwise—immediately after it is made.
27 (2) The order remains in force:
28 (a) for the period (if any) specified in the order; or
29 (b) until it is revoked by the Minister.

1 **466 Reviews of conservation orders**

- 2 (1) The Minister must:
- 3 (a) at intervals of not more than 5 years, review the conservation
- 4 order; and
- 5 (b) after each review, confirm, vary or revoke the order by
- 6 instrument in writing.
- 7 (2) Before reviewing the order, the Minister must seek the Secretary's
- 8 advice on the review.
- 9 (3) The Minister must not revoke the order unless he or she is satisfied
- 10 that the order is no longer needed to protect the environment.
- 11 (4) The Minister must not vary the order unless he or she is satisfied
- 12 that the order as varied adequately protects the listed threatened
- 13 species or listed threatened ecological community the order was
- 14 first made to protect.
- 15 (5) Immediately after a variation of the order, the order continues in
- 16 force as so varied.

17 **467 Publication of conservation orders**

- 18 (1) As soon as practicable after making or reviewing a conservation
- 19 order, the Minister must cause the Secretary to be informed of the
- 20 making of the order, or the decision on the review, as the case
- 21 requires.
- 22 (2) The Secretary must, as soon as practicable after being so informed:
- 23 (a) cause to be published in the *Gazette*, in a daily newspaper
- 24 circulating in each State or self-governing Territory in which
- 25 are located Commonwealth areas to which the order relates
- 26 and in any other way required by the regulations, a notice
- 27 containing:
- 28 (i) a copy of the order; and
- 29 (ii) a statement to the effect that contravention of the order
- 30 is an offence against this Act; and

Section 468

- 1 (iii) if applicable, a statement of the decision on the review;
2 and
3 (iv) a statement to the effect that a person affected by the
4 order may apply to the Minister, within 28 days of the
5 publication (or within such further period as the
6 Minister allows), for a reconsideration of the order by
7 the Minister; and
8 (b) take all reasonable steps to ensure that each person who the
9 Secretary knows would be affected by the order is given a
10 notice containing:
11 (i) a copy of the order; and
12 (ii) if applicable, a statement of the decision on the review;
13 and
14 (iii) unless the person is a Commonwealth agency or an
15 agency of a State or self-governing Territory—a
16 statement to the effect that contravention of the order is
17 an offence against this Act; and
18 (iv) a statement to the effect that the person may apply to the
19 Minister, within 28 days of being given the notice (or
20 within such further period as the Minister allows), for a
21 reconsideration of the order by the Minister.
22 (3) Failure to comply with this section does not affect the validity of
23 the order.

24 **468 Application for reconsideration of conservation orders or**
25 **decisions on review**

- 26 (1) A person affected by a conservation order, or by the decision on a
27 review of a conservation order, may apply to the Minister to
28 reconsider the order or the decision, as the case requires.
29 (2) The application must be in writing.
30 (3) Subject to subsection (4), the application must be made within 28
31 days, or within such further period as the Minister allows, after the

- 1 publication under paragraph 467(2)(a) of the notice relating to the
2 making of the order or conduct of the review.
- 3 (4) If the person is given a copy of the order after that publication, the
4 period of 28 days within which that person must make the
5 application is taken to commence on the day on which the person
6 received the notice.

7 **469 Reconsideration of conservation orders and decisions on review**

- 8 (1) Upon receiving the application, the Minister must:
9 (a) seek the Secretary's advice on the application; and
10 (b) reconsider the conservation order or the decision on review,
11 as the case requires; and
12 (c) by written instrument:
13 (i) confirm, vary or revoke the order; or
14 (ii) confirm or vary the decision on review; and
15 (d) cause the Secretary to be informed accordingly.
- 16 (2) As soon as practicable after being so informed, the Secretary must:
17 (a) notify the applicant in writing of the result of the
18 reconsideration; and
19 (b) if the order is revoked or varied or the decision on review is
20 varied—cause to be published in the *Gazette*, and in any
21 other way required by the regulations, a notice:
22 (i) stating that fact; and
23 (ii) in the case of a variation—setting out a copy of the
24 order or decision as so varied.
- 25 (3) Immediately after a variation of the order, the order continues in
26 effect as so varied.

Section 470

1 **Subdivision C—Complying with conservation orders**

2 **470 Contravening conservation orders is an offence**

3 (1) A person must not take an action reckless as to whether the action
4 contravenes a conservation order.

5 Penalty: 500 penalty units.

6 (2) If a person believes that taking action that he or she proposes to
7 take may contravene a particular conservation order, the person
8 may seek the Minister's advice under subsection 471(3) on
9 whether the order would be contravened by taking that action.

10 (3) The person does not contravene the order if he or she acts in
11 accordance with advice given to him or her under subsection
12 471(3) to the effect that the order would not be contravened.

13 **471 Minister to consider proposed actions etc.**

14 (1) This section applies to a proposed action if it is referred to the
15 Minister under section 470 for the Minister's advice on whether it
16 would contravene a conservation order.

17 (2) A person who proposes to take the action may make written
18 submissions to the Minister about the proposed action.

19 (3) The Minister must:
20 (a) refer the proposed action, together with any submissions
21 received by the Minister about the proposed action, to the
22 Secretary; and
23 (b) after considering the Secretary's advice on the matter, give
24 the person who sought the Minister's advice under section
25 470 a written notice of the minister's advice on the proposed
26 action.

1 **472 Contents of notices of advice**

- 2 (1) The notice of advice must state whether the Minister thinks that the
3 proposed action would contravene a conservation order.
- 4 (2) If the notice of advice is given to a person who is not a
5 Commonwealth agency, it must include:
- 6 (a) a statement to the effect that, if the person is dissatisfied with
7 the Minister's decision to give that advice, application may,
8 subject to the *Administrative Appeals Tribunal Act 1975*, be
9 made to the Administrative Appeals Tribunal for review of
10 the decision; and
- 11 (b) a statement to the effect that the person may request a
12 statement under section 28 of that Act in relation to the
13 decision.

14 **473 Review by the Administrative Appeals Tribunal**

- 15 (1) Applications may be made to the Administrative Appeals Tribunal
16 for review of the Minister's decision to give the advice.
- 17 (2) Despite section 27 of the *Administrative Appeals Tribunal Act*
18 1975, applications are not to be made by or on behalf of
19 Commonwealth agencies.

20 **474 Assistance in complying with conservation orders**

- 21 (1) On behalf of the Commonwealth, the Secretary may provide
22 assistance to a person (other than a Commonwealth agency) to
23 comply with prohibitions, restrictions or requirements imposed on
24 a person by a conservation order.
- 25 (2) The assistance may take any one or more of the following forms:
- 26 (a) payment of money;
- 27 (b) provision of goods;
- 28 (c) provision of labour;
- 29 (d) provision of other services.

Chapter 6 Administration
Part 17 Enforcement
Division 13 Conservation orders

Section 474

- 1 (3) The value of the assistance must not exceed that which the
2 Secretary thinks are the reasonable and direct costs of complying
3 with the prohibitions, restrictions or requirements in question.
- 4 (4) Assistance given under this section must be taken into account in
5 determining compensation payable under section 519.

1

2 **Division 14—Injunctions**

3 **475 Injunctions for contravention of the Act**

4 *Applications for injunctions*

5 (1) If a person has engaged, engages or proposes to engage in conduct
6 consisting of an act or omission that constitutes an offence or other
7 contravention of this Act or the regulations:

8 (a) the Minister; or

9 (b) an interested person (other than an unincorporated
10 organisation); or

11 (c) a person acting on behalf of an unincorporated organisation
12 that is an interested person;

13 may apply to the Federal Court for an injunction.

14 *Prohibitory injunctions*

15 (2) If a person has engaged, is engaging or is proposing to engage in
16 conduct constituting an offence or other contravention of this Act
17 or the regulations, the Court may grant an injunction restraining the
18 person from engaging in the conduct.

19 *Additional orders with prohibitory injunctions*

20 (3) If the court grants an injunction restraining a person from engaging
21 in conduct and in the Court's opinion it is desirable to do so, the
22 Court may make an order requiring the person to do something
23 (including repair or mitigate damage to the environment).

24 *Mandatory injunctions*

25 (4) If a person has refused or failed, or is refusing or failing, or is
26 proposing to refuse or fail to do an act, and the refusal or failure
27 did, does or would constitute an offence or other contravention of
28 this Act or the regulations, the Court may grant an injunction
29 requiring the person to do the act.

Section 475

1

Interim injunctions

2

(5) Before deciding an application for an injunction under this section, the Court may grant an interim injunction:

3

4

(a) restraining a person from engaging in conduct; or

5

(b) requiring a person to do an act.

6

Meaning of interested person—individuals

7

(6) For the purposes of an application for an injunction relating to conduct or proposed conduct, an individual is an ***interested person*** if the individual is an Australian citizen or ordinarily resident in Australia or an external Territory, and:

8

9

10

11

(a) the individual's interests have been, are or would be affected by the conduct or proposed conduct; or

12

13

(b) the individual engaged in a series of activities for protection or conservation of, or research into, the environment at any time in the 2 years immediately before:

14

15

16

(i) the conduct; or

17

(ii) in the case of proposed conduct—making the application for the injunction.

18

19

Meaning of interested person—organisations

20

(7) For the purposes of an application for an injunction relating to conduct or proposed conduct, an organisation (whether incorporated or not) is an ***interested person*** if it is incorporated (or was otherwise established) in Australia or an external Territory and one or more of the following conditions are met:

21

22

23

24

(a) the organisation's interests have been, are or would be affected by the conduct or proposed conduct;

25

26

27

(b) if the application relates to conduct—at any time during the 2 years immediately before the conduct:

28

29

(i) the organisation's objects or purposes included the protection or conservation of, or research into, the environment; and

30

31

- 1 (ii) the organisation engaged in a series of activities related
2 to the protection or conservation of, or research into, the
3 environment;
- 4 (c) if the application relates to proposed conduct—at any time
5 during the 2 years immediately before the making of the
6 application:
- 7 (i) the organisation's objects or purposes included the
8 protection or conservation of, or research into, the
9 environment; and
- 10 (ii) the organisation engaged in a series of activities related
11 to the protection or conservation of, or research into, the
12 environment.

13 **476 Injunctions for contraventions of conservation agreements**

14 *Applications for injunctions*

- 15 (1) If a party to a conservation agreement engages or proposes to
16 engage in conduct consisting of an act or omission that constitutes
17 a contravention of the agreement, another party to the agreement or
18 the Minister may apply to the Federal Court for an injunction.

19 *Prohibitory injunctions*

- 20 (2) If a person has engaged, is engaging or is proposing to engage in
21 conduct contravening the agreement, the Court may grant an
22 injunction restraining the person from engaging in the conduct.

23 *Additional orders with prohibitory injunctions*

- 24 (3) If the court grants an injunction restraining a person from engaging
25 in conduct and in the Court's opinion it is desirable to do so, the
26 Court may make an order requiring the person to do something
27 (including repair or mitigate damage to the environment).

Section 477

1 *Mandatory injunctions*

- 2 (4) If a person has refused or failed, or is refusing or failing, or is
3 proposing to refuse or fail to do an act, and the refusal or failure
4 was, is or would be a contravention of the agreement, the Court
5 may grant an injunction requiring the person to do the act.

6 *Interim injunctions*

- 7 (5) Before deciding an application for an injunction under this section
8 the Court may grant an interim injunction:
9 (a) restraining a person from engaging in conduct; or
10 (b) requiring a person to do an act.

11 **477 Discharge of injunctions**

12 On application, the Federal Court may discharge or vary an
13 injunction.

14 **478 No undertakings as to damages**

15 The Federal Court is not to require an applicant for an injunction to
16 give an undertaking as to damages as a condition of granting an
17 interim injunction.

18 **479 Certain considerations for granting injunctions not relevant**

19 *Prohibitory injunctions*

- 20 (1) The Federal Court may grant an injunction restraining a person
21 from engaging in conduct:
22 (a) whether or not it appears to the Court that the person intends
23 to engage again, or to continue to engage, in conduct of that
24 kind; and
25 (b) whether or not the person has previously engaged in conduct
26 of that kind; and

Section 480

- 1 (c) whether or not there is a significant risk of injury or damage
2 to human beings or the environment if the person engages, or
3 continues to engage, in conduct of that kind.

4 *Mandatory injunctions*

- 5 (2) The Federal Court may grant an injunction requiring a person to do
6 a particular act or thing:
7 (a) whether or not it appears to the Court that the person intends
8 to refuse or fail again, or to continue to refuse or fail, to do
9 the act or thing; and
10 (b) whether or not the person has previously refused or failed to
11 do the act or thing; and
12 (c) whether or not there is a significant risk of injury or damage
13 to human beings or the environment if the person refuses or
14 fails, or continues to refuse or fail, to do the act or thing.

15 **480 Powers conferred are in addition to other powers of the Court**

16 The powers conferred on the Federal Court by this Division are in
17 addition to (and do not limit) any other powers of the Court.

Section 481

1

2 **Division 15—Civil penalties**

3 **481 Federal Court may order person to pay pecuniary penalty for**
4 **contravening civil penalty provision**

5 *Application for order*

- 6 (1) Within 6 years of a person (the *wrongdoer*) contravening a civil
7 penalty provision, the Minister may apply on behalf of the
8 Commonwealth to the Federal Court for an order that the
9 wrongdoer pay the Commonwealth a pecuniary penalty.

10 *Court may order wrongdoer to pay pecuniary penalty*

- 11 (2) If the Court is satisfied that the wrongdoer has contravened a civil
12 penalty provision, the Court may order the wrongdoer to pay to the
13 Commonwealth for each contravention the pecuniary penalty that
14 the Court determines is appropriate (but not more than the relevant
15 amount specified for the provision).

16 *Determining amount of pecuniary penalty*

- 17 (3) In determining the pecuniary penalty, the Court must have regard
18 to all relevant matters, including:
19 (a) the nature and extent of the contravention; and
20 (b) the nature and extent of any loss or damage suffered as a
21 result of the contravention; and
22 (c) the circumstances in which the contravention took place; and
23 (d) whether the person has previously been found by the Court in
24 proceedings under this Act to have engaged in any similar
25 conduct.

26 *Conduct contravening more than one civil penalty provision*

- 27 (4) If conduct constitutes a contravention of 2 or more civil penalty
28 provisions, proceedings may be instituted under this Act against a
29 person in relation to the contravention of any one or more of those
-

1 provisions. However, the person is not liable to more than one
2 pecuniary penalty under this section in respect of the same
3 conduct.

4 **482 What is a *civil penalty provision*?**

5 A subsection of this Act (or a section of this Act that is not divided
6 into subsections) is a *civil penalty provision* if:

- 7 (a) the words “civil penalty” and one or more amounts in penalty
8 units are set out at the foot of the subsection (or section); or
9 (b) another provision of this Act specifies that the subsection (or
10 section) is a civil penalty provision.

11 **483 Contravening a civil penalty provision is not an offence**

12 A contravention of a civil penalty provision is not an offence.

13 **484 Persons involved in contravening civil penalty provision**

14 (1) A person must not:

- 15 (a) aid, abet, counsel or procure a contravention of a civil
16 penalty provision; or
17 (b) induce (by threats, promises or otherwise) a contravention of
18 a civil penalty provision; or
19 (c) be in any way directly or indirectly knowingly concerned in,
20 or party to, a contravention of a civil penalty provision; or
21 (d) conspire to contravene a civil penalty provision.

22 (2) This Division applies to a person who contravenes subsection (1)
23 in relation to a civil penalty provision as if the person had
24 contravened the provision.

25 **485 Recovery of a pecuniary penalty**

26 If the Federal Court orders a person to pay a pecuniary penalty:

- 27 (a) the penalty is payable to the Commonwealth; and

Section 486

- 1 (b) the Commonwealth may enforce the order as if it were a
2 judgment of the Court.

3 **486 Gathering information for application for pecuniary penalty**

- 4 (1) This section applies if it appears to the Minister that a person (the
5 *wrongdoer*) may have contravened a civil penalty provision.
- 6 (2) If the Minister, on reasonable grounds, suspects or believes that a
7 person other than the wrongdoer can give information relevant to
8 an application for a civil penalty order in relation to the
9 contravention, whether or not such an application has been made,
10 the Minister may, by writing given to the person, require the
11 person to give all reasonable assistance in connection with such an
12 application.
- 13 (3) Subsection (2) does not apply in relation to a duly qualified legal
14 practitioner who is acting, or has acted, for the wrongdoer.
- 15 (4) If a person fails to give assistance as required under subsection (2):
16 (a) the person contravenes this subsection; and
17 (b) the Federal Court may, on the application of the Minister,
18 order the person to comply with the requirement as specified
19 in the order.

1

2 **Division 16—Review of administrative decisions**

3 **487 Extended standing for judicial review**

4 (1) This section extends (and does not limit) the meaning of the term
5 *person aggrieved* in the *Administrative Decisions (Judicial*
6 *Review) Act 1977* for the purposes of the application of that Act in
7 relation to:

- 8 (a) a decision made under this Act or the regulations; or
9 (b) a failure to make a decision under this Act or the regulations;
10 or
11 (c) conduct engaged in for the purpose of making a decision
12 under this Act or the regulations.

13 (2) An individual is taken to be a person aggrieved by the decision,
14 failure or conduct if:

- 15 (a) the individual is an Australian citizen or ordinarily resident in
16 Australia or an external Territory; and
17 (b) at any time in the 2 years immediately before the decision,
18 failure or conduct, the individual has engaged in a series of
19 activities in Australia or an external Territory for protection
20 or conservation of, or research into, the environment.

21 (3) An organisation or association (whether incorporated or not) is
22 taken to be a person aggrieved by the decision, failure or conduct
23 if:

- 24 (a) the organisation or association is incorporated, or was
25 otherwise established, in Australia or an external Territory;
26 and
27 (b) at any time in the 2 years immediately before the decision,
28 failure or conduct, the organisation or association has
29 engaged in a series of activities in Australia or an external
30 Territory for protection or conservation of, or research into,
31 the environment; and

Section 488

1 (c) at the time of the decision, failure or conduct, the objects or
2 purposes of the organisation or association included
3 protection or conservation of, or research into, the
4 environment.

5 (4) A term (except *person aggrieved*) used in this section and in the
6 *Administrative Decisions (Judicial Review) Act 1977* has the same
7 meaning in this section as it has in that Act.

8 **488 Applications on behalf of unincorporated organisations**

9 (1) A person acting on behalf of an unincorporated organisation that is
10 a person aggrieved (for the purposes of the *Administrative*
11 *Decisions (Judicial Review) Act 1977*) by:

- 12 (a) a decision made under this Act or the regulations; or
13 (b) a failure to make a decision under this Act or the regulations;
14 or
15 (c) conduct engaged in for the purpose of making a decision
16 under this Act or the regulations;

17 may apply under that Act for a review of the decision, failure or
18 conduct.

19 (2) The *Administrative Decisions (Judicial Review) Act 1977* applies
20 in relation to the person as if he or she were a person aggrieved.

1

2 **Division 17—Duty to provide accurate information**

3 **489 Providing false or misleading information to obtain approval or**
4 **permit**

5

(1) A person is guilty of an offence if:

6

(a) the person provides information in response to a requirement
or request under Part 7, 8, 9 or 13; and

7

8

(b) the person is reckless as to whether the information is false or
misleading in a material particular.

9

10

Note 1: The fault element in paragraph (1)(b) can be demonstrated by proof of
knowledge. See subsection 5.4(4) of the *Criminal Code*.

11

12

Note 2: Section 492 provides a defence if the person informed the recipient
that the information was false or misleading and explained how it was
false or misleading.

13

14

15

(2) The offence is punishable on conviction by:

16

(a) imprisonment for a term not more than 2 years, a fine not
more than 120 penalty units, or both, if it is proved the
person knew the information was false or misleading; or

17

18

19

(b) imprisonment for a term not more than 1 year, a fine not
more than 60 penalty units, or both, if it is proved the person
was reckless as to whether the information was false or
misleading.

20

21

22

23

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

24

25

26

(3) Subsection (1) does not apply to a requirement to provide
information that is imposed by a condition attached to an
environmental authority.

27

28

29

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

30

Section 492

- 1 (ii) the Minister; or
2 (iii) an employee or officer in the Department; or
3 (iv) a commissioner;
4 performing a duty or carrying out a function under this Act or
5 the regulations; and
6 (c) knowing the information or document is false or misleading
7 in a material particular.

8 Note: Section 492 provides a defence if the person informed the recipient
9 that the information or document was false or misleading and
10 explained how it was false or misleading.

- 11 (2) The offence is punishable on conviction by imprisonment for a
12 term not more than 1 year, a fine not more than 60 penalty units, or
13 both.

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

17 **492 Defence of explanation of false or misleading information**

18 Sections 489, 490 and 491 do not apply if the person who provided
19 the information or document explained to the person to whom the
20 information or document was provided:

- 21 (a) that the information or document was false or misleading;
22 and
23 (b) how the information or document was false or misleading.

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

Section 493

1

2

Division 18—Liability of executive officers for corporations

3

4

493 Who is an *executive officer* of a body corporate?

5

In this Act:

6

executive officer of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

7

8

9

494 Civil penalties for executive officers of bodies corporate

10

(1) If:

11

(a) a body corporate contravenes a provision of Part 3 that is a civil penalty provision or section 142; and

12

13

(b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and

14

15

(c) the officer was in a position to influence the conduct of the body in relation to the contravention; and

16

17

(d) the officer failed to take all reasonable steps to prevent the contravention;

18

19

the officer contravenes this subsection.

20

(2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order an individual to pay for contravening the civil penalty provision contravened by the body corporate.

21

22

23

24

25

495 Criminal liability of executive officers of bodies corporate

26

If:

27

(a) a body corporate contravenes:

28

(i) section 489 (Providing false or misleading information to obtain approval or permit); or

29

Section 496

- 1 (ii) section 490 (Providing false or misleading information
2 in response to a condition on an approval or permit); or
3 (iii) section 491 (Providing false or misleading information
4 to authorised officer etc.); and
5 (b) an executive officer of the body knew that, or was reckless or
6 negligent as to whether, the contravention would occur; and
7 (c) the officer was in a position to influence the conduct of the
8 body in relation to the contravention; and
9 (d) the officer failed to take all reasonable steps to prevent the
10 contravention;
11 the officer is guilty of an offence punishable on conviction by
12 imprisonment for a term not exceeding 2 years.

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

15 Note 2: Subsection 4B(2) of the *Crimes Act 1914* lets a court that convicts an
16 individual of an offence impose a fine instead of, or as well as,
17 imprisonment. The maximum fine (in penalty units) the court can
18 impose is 5 times the maximum term of imprisonment (in months).

19 **496 Did an executive officer take reasonable steps to prevent**
20 **contravention?**

- 21 (1) For the purposes of sections 494 and 495, in determining whether
22 an executive officer of a body corporate failed to take all
23 reasonable steps to prevent the contravention, a court is to have
24 regard to:
25 (a) what action (if any) the officer took directed towards
26 ensuring the following (to the extent that the action is
27 relevant to the contravention):
28 (i) that the body arranges regular professional assessments
29 of the body's compliance with this Act and the
30 regulations;
31 (ii) that the body implements any appropriate
32 recommendations arising from such an assessment;

Chapter 6 Administration

Part 17 Enforcement

Division 18 Liability of executive officers for corporations

Section 496

- 1 (iii) that the body has an appropriate system established for
2 managing the effects of the body's activities on the
3 environment;
- 4 (iv) that the body's employees, agents and contractors have
5 a reasonable knowledge and understanding of the
6 requirements to comply with this Act and the
7 regulations, in so far as those requirements affect the
8 employees, agents or contractors concerned; and
- 9 (b) what action (if any) the officer took when he or she became
10 aware that the body was contravening:
- 11 (i) this Act; or
12 (ii) the regulations; or
13 (iii) if the body contravened Part 3 or section 142—any
14 environmental management plan that was prepared by
15 the body, and approved by the Minister, as required by a
16 condition attached to an approval under Part 9 for the
17 purposes of a provision of Part 3 of the body's taking of
18 an action.
- 19 (2) This section does not, by implication, limit the generality of
20 sections 494 and 495.

1

2 **Division 19—Infringement notices**

3 **497 Infringement notices**

- 4 (1) The regulations may make provision enabling a person who is
5 alleged to have committed an offence against the regulations to pay
6 a penalty to the Commonwealth as an alternative to prosecution.
- 7 (2) The penalty must equal one-fifth of the maximum fine that a court
8 could impose on the person as a penalty for that offence.

Section 498

1

2 **Division 20—Publicising contraventions**

3 **498 Minister may publicise contraventions of this Act or the**
4 **regulations**

- 5 (1) The Minister may publicise, in any way he or she thinks
6 appropriate, a contravention of this Act or the regulations for
7 which a person has been convicted or ordered to pay a pecuniary
8 penalty.
- 9 (2) This Division does not:
- 10 (a) limit the Minister's powers to publicise a contravention of
11 this Act or the regulations; or
- 12 (b) prevent anyone else from publicising a contravention of this
13 Act or the regulations; or
- 14 (c) affect any obligation (however imposed) on anyone to
15 publicise a contravention of this Act or the regulations.

1
2 **Part 18—Remediating environmental damage**
3

4 **499 Commonwealth powers to remedy environmental damage**

5 (1) This section applies if the Minister suspects that an act or omission
6 constitutes a contravention of this Act or the regulations (whether
7 or not the act or omission is an offence against this Act or the
8 regulations).

9 (2) On behalf of the Commonwealth, the Minister may cause to be
10 taken such steps as he or she thinks proper:

11 (a) to repair or remove any condition that arises from the act or
12 omission and relates to:

13 (i) the environment; or

14 (ii) if the contravention was of a provision of Part 3—the
15 matter protected by the provision; or

16 (b) to mitigate any damage that arises from the act or omission
17 and relates to:

18 (i) the environment; or

19 (ii) if the contravention was of a provision of Part 3—the
20 matter protected by the provision; or

21 (c) to prevent any damage that is likely to arise from the act or
22 omission and relates to:

23 (i) the environment; or

24 (ii) if the contravention was of a provision of Part 3—the
25 matter protected by the provision.

26 (3) If:

27 (a) a person provided false or misleading information in
28 contravention of section 489; and

29 (b) as a result of the contravention the Minister granted an
30 environmental authority to a person, or set conditions relating
31 to the environmental authority, unaware of the certainty or
32 likelihood of the action covered by the authority:

Section 500

- 1 (i) resulting in damage to the environment or to a matter
2 protected by a provision of Part 3; or
3 (ii) giving rise to a condition relating to the environment or
4 to a matter protected by a provision of Part 3; and
5 (c) the action results in damage to the environment or gives rise
6 to a condition relating to the environment;
7 then, for the purposes of this section and section 500, the damage
8 or condition is taken to arise from the provision of false or
9 misleading information in contravention of section 489.
- 10 (4) This section does not affect the exercise by the Commonwealth or
11 the Minister of powers under another provision of this Act or under
12 any other law.

13 **500 Liability for loss or damage caused by contravention**

- 14 (1) A person (the *wrongdoer*) who contravenes this Act or the
15 regulations is liable to pay to another person (the *affected party*)
16 who suffers loss or damage arising from the contravention an
17 amount equal to the other person's loss or damage.
- 18 (2) Without limiting the amount payable under subsection (1), the loss
19 or damage a person suffers from a contravention of this Act or the
20 regulations includes the expenses and liabilities (if any) reasonably
21 incurred by the affected party to:
- 22 (a) repair or remove any condition that arises from the act or
23 omission constituting the contravention and relates to:
24 (i) the environment; or
25 (ii) if the contravention was of a provision of Part 3—the
26 matter protected by the provision; or
27 (b) mitigate any damage that arises from the act or omission
28 constituting the contravention and relates to:
29 (i) the environment; or
30 (ii) if the contravention was of a provision of Part 3—the
31 matter protected by the provision; or

Section 501

- 1 (c) prevent any damage likely to arise from the act or omission
2 constituting the contravention and relates to:
3 (i) the environment; or
4 (ii) if the contravention was of a provision of Part 3—the
5 matter protected by the provision.

6 Note: This makes the person who contravenes the Act liable to pay the
7 Commonwealth the expenses reasonably incurred in taking steps
8 under section 499 in relation to the contravention.

- 9 (3) An amount payable under subsection (1) is a debt due to the
10 affected party, recoverable in a court of competent jurisdiction.
- 11 (4) If 2 or more persons are liable under subsection (1) to pay an
12 amount in respect of the same loss or damage, those persons are
13 jointly and severally liable to pay the sum.
- 14 (5) A finding by a court in criminal proceedings or civil proceedings
15 that the wrongdoer contravened this Act or the regulations is
16 admissible as evidence of that fact in proceedings to recover an
17 amount payable under subsection (1).
- 18 (6) This section applies:
19 (a) whether or not the contravention was an offence; and
20 (b) whether or not the provision contravened is a civil penalty
21 provision.
- 22 (7) This section does not apply to a decision (or a failure to make a
23 decision or conduct for the purposes of making a decision)
24 purportedly under this Act or the regulations that contravenes this
25 Act or the regulations.

26 **501 Other powers not affected**

27 This Division does not affect any other powers or rights under this
28 Act, the regulations or any other law.

Section 502

1

2

Part 19—Organisations

3

Division 1—Establishment and functions of the Threatened Species Scientific Committee

4

5

502 Establishment

6

(1) The Threatened Species Scientific Committee is established.

7

(2) The Minister is to determine in writing the composition of the Committee, including the qualifications of its members.

8

9

(3) The Minister is to appoint the members of the Committee on a part-time basis, and must appoint one of the members to chair the Committee.

10

11

12

503 Functions of the Committee

13

The functions of the Committee are:

14

(a) to advise the Minister in accordance with Division 5 of Part 13 in relation to the making of recovery plans and threat abatement plans; and

15

16

17

(b) to advise the Minister on the amendment and updating of the lists established under Part 13; and

18

19

(c) to advise the Minister, at his or her request, on matters relating to the administration of this Act; and

20

21

(d) to give the Minister such other advice as is provided for in this Act; and

22

23

(e) to perform such other functions as are conferred on the Committee by this Act.

24

**Division 2—Establishment and functions of the Biological
Diversity Advisory Committee**

504 Establishment

- (1) The Biological Diversity Advisory Committee is established.
- (2) The Minister is to determine in writing the composition of the Committee, including the qualifications of its members.
- (3) The Minister is to appoint the members of the Committee on a part-time basis, and must appoint one of the members to chair the Committee.
- (4) The Minister must ensure that the membership includes members who are appointed to represent the following:
 - (a) the body known as the Australian and New Zealand Environment and Conservation Council;
 - (b) conservation organisations that are not authorities of the Commonwealth or of any State or Territory;
 - (c) the scientific community (including both that part of the scientific community concerned with marine species and that part of the scientific community concerned with terrestrial species);
 - (d) the rural community;
 - (e) the business community;
 - (f) the Commonwealth.
- (5) The Minister must ensure that, as far as practicable, each one of at least 5 members:
 - (a) possess scientific qualifications that the Minister thinks relevant to the performance of the Committee's functions;
and
 - (b) is appointed to represent the scientific community and is not appointed to represent any of the other bodies, groups of bodies or communities referred to in subsection (4).

Chapter 6 Administration

Part 19 Organisations

Division 2 Establishment and functions of the Biological Diversity Advisory
Committee

Section 505

- 1 (6) The Minister must ensure that a majority of the members are not
2 persons employed by the Commonwealth or Commonwealth
3 agencies.

4 **505 Functions of the Committee**

5 The functions of the Committee are:

- 6 (a) to advise the Minister, at his or her request, on matters
7 relating to the conservation and ecologically sustainable use
8 of biological diversity; and
9 (b) to perform such other functions as are conferred on the
10 Committee by this Act or the regulations.

1

2 **Division 3—Members and procedures of Committees**

3 **506 Application**

4 This Division applies to the following Committees:

- 5 (a) the Threatened Species Scientific Committee;
6 (b) the Biological Diversity Advisory Committee.

7 **507 Terms and conditions**

8 *Term of office*

- 9 (1) A member of a Committee holds office for the period specified in
10 the instrument of appointment. The period must not exceed 5 years.

11 Note: Section 509 sets out the circumstances in which a member's
12 appointment may be (or must be) terminated.

13 *Resignation*

- 14 (2) A member of a Committee may resign his or her appointment by
15 giving the Minister a written resignation.

16 *Other terms and conditions*

- 17 (3) A member of a Committee holds office on the terms and conditions
18 (if any) that are determined by the Minister in relation to matters
19 not covered by this Act or the regulations.

20 **508 Remuneration**

- 21 (1) A member of a Committee is to be paid the remuneration that is
22 determined by the Remuneration Tribunal. If no determination of
23 that remuneration by the Tribunal is in operation, the member is to
24 be paid the remuneration that is prescribed.

- 25 (2) A member of a Committee is to be paid the allowances that are
26 prescribed.

Section 509

- 1 (3) This section has effect subject to the *Remuneration Tribunal Act*
2 1973.

3 **509 Termination of appointments of Committee members**

4 *Termination when person stops being qualified for appointment*

- 5 (1) The appointment of a person to a position of member of a
6 Committee is terminated when the person ceases to be qualified for
7 appointment to the position.

8 *Termination for misbehaviour or incapacity*

- 9 (2) The Minister may terminate the appointment of a member of a
10 Committee for misbehaviour or physical or mental incapacity.

11 *Termination for failure to attend Committee meetings*

- 12 (3) The Minister may terminate the appointment of a member of a
13 Committee if the member is absent, except on leave of absence,
14 from 3 consecutive meetings of the Committee of which the
15 member has had notice.

16 *Termination for engaging in conflicting work*

- 17 (4) The Minister may terminate the appointment of a member of a
18 Committee if the member engages in paid employment that, in the
19 Minister's opinion, conflicts or could conflict with the proper
20 performance of the duties of the member.

21 *Termination for failure to disclose interests*

- 22 (5) The Minister must terminate the appointment of a member of a
23 Committee if:
24 (a) the member does not comply with any requirements
25 prescribed by the regulations to disclose an interest the
26 member has in a matter being considered or about to be
27 considered by the Committee; and

- 1 (b) the member does not have a reasonable excuse for not
2 complying.

3 *Termination for bankruptcy or insolvency*

- 4 (6) The Minister may terminate the appointment of a member of a
5 Committee if the member:
6 (a) becomes bankrupt; or
7 (b) applies to take the benefit of any law for the relief of
8 bankrupt or insolvent debtors; or
9 (c) compounds with his or her creditors; or
10 (d) makes an assignment of his or her remuneration for the
11 benefit of his or her creditors.

12 **510 Procedure of a Committee**

- 13 (1) The regulations may provide for:
14 (a) matters relating to the operation of a Committee, including:
15 (i) procedures for convening meetings of the Committee;
16 and
17 (ii) procedures for determining who is to preside at a
18 meeting of the Committee; and
19 (iii) determining who may attend a meeting of the
20 Committee; and
21 (iv) the constitution of a quorum for a meeting of the
22 Committee; and
23 (v) procedures relating to a member's interest in matters
24 being dealt with by the Committee; and
25 (vi) the way in which matters are to be resolved by the
26 Committee; and
27 (b) the appointment and rights of a deputy of a member of a
28 Committee.
- 29 (2) The regulations may allow a Committee to determine a matter
30 relating to the operation of the Committee for which the
31 regulations may provide.
-

Chapter 6 Administration
Part 19 Organisations
Division 3 Members and procedures of Committees

Section 510

- 1 (3) If there are no regulations in force, a Committee may operate in the
2 way it determines.

1

2 **Division 4—Advisory committees**

3 **511 Minister may establish advisory committees**

- 4 (1) The Minister may by written instrument establish an advisory
5 committee to advise the Minister on specified matters relating to
6 the administration of this Act.
- 7 (2) However, the Minister must not specify that an advisory committee
8 is to advise the Minister on the management of a jointly managed
9 reserve.
- 10 (3) The Minister is to determine in writing the composition of an
11 advisory committee, including qualifications of its members.

12 **512 Appointments**

- 13 (1) The Minister may appoint a person on a part-time basis to be a
14 member of an advisory committee.
- 15 (2) The Minister must appoint one of the members to chair the
16 committee.

17 **513 Members of advisory committees**

- 18 The regulations may provide for the terms and conditions
19 applicable to members of an advisory committee, including terms
20 and conditions relating to:
- 21 (a) term of office; and
22 (b) remuneration; and
23 (c) allowances; and
24 (d) leave of absence; and
25 (e) disclosure of interests; and
26 (f) termination of membership.

Section 514

1 **514 Committee procedure**

- 2 (1) An advisory committee may operate in the way it determines,
3 subject to any regulations.
- 4 (2) The regulations may provide for the operation and procedures of an
5 advisory committee. The regulations may allow a committee to
6 determine its own procedure on any matter.

1

2
3

Part 20—Delegation

4

515 Delegation

5
6
7
8
9

(1) The Minister may, by signed instrument, delegate all or any of his or her powers or functions under this Act to an officer or employee in the Department. The delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the Minister.

10
11
12
13
14

(2) The Secretary may, by signed instrument, delegate all or any of his or her powers or functions under this Act to an officer or employee in the Department. The delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the Secretary.

Section 516

1

2
3

Part 21—Reporting

4

516 Annual report on operation of Act

5

- (1) The Secretary must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operation of this Act for the 12 months ending on that 30 June.

6

7

8

9

Note 1: Other provisions of this Act require the report to include certain matters.

10

11

Note 2: Section 34C of the *Acts Interpretation Act 1901* sets out rules about the time within which annual reports must be given to the Minister.

12

13

14

- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

1
2 **Chapter 7—Miscellaneous**

3 **Part 22—Miscellaneous**
4

5 **517 Determinations of species**

- 6 (1) The Minister may, by instrument in writing, determine that a
7 distinct population of biological entities is a species for the
8 purposes of this Act.
- 9 (2) A determination is a disallowable instrument for the purposes of
10 section 46A of the *Acts Interpretation Act 1901*.

11 **518 Non-compliance with time limits**

- 12 (1) Anything done by the Commonwealth, the Minister or the
13 Secretary under this Act or the regulations is not invalid merely
14 because it was not done within the period required by this Act or
15 the regulations.
- 16 (2) If, during a financial year, one or more things required to be done
17 under this Act or the regulations were not done within the period
18 required by this Act or the regulations, the Minister must:
- 19 (a) cause to be prepared a statement setting out the reasons why
20 each of those things was not done within the period required
21 by this Act or the regulations; and
- 22 (b) cause a copy of the statement to be laid before each House of
23 the Parliament as soon as practicable after the end of the
24 financial year.
- 25 (3) Subsection (1) does not reduce or remove an obligation under this
26 Act or the regulations to do a thing within a particular period.

Section 519

1 **519 Compensation for acquisition of property**

2 *When compensation is necessary*

- 3 (1) If, apart from this section, the operation of this Act would result in
4 an acquisition of property from a person that would be invalid
5 because of paragraph 51(xxxi) of the Constitution (which deals
6 with acquisition of property on just terms) the Commonwealth
7 must pay the person a reasonable amount of compensation.

8 *Definition*

- 9 (2) In this Act:

10 **acquisition of property** has the same meaning as in paragraph
11 51(xxxi) of the Constitution.

12 *Court can decide amount of compensation*

- 13 (3) If the Commonwealth and the person do not agree on the amount
14 of compensation to be paid, the person may apply to the Federal
15 Court for the recovery from the Commonwealth of a reasonable
16 amount of compensation fixed by the Court.

17 *Other compensation to be taken into account*

- 18 (4) In assessing compensation payable by the Commonwealth, the
19 Court must take into account any other compensation or remedy
20 arising out of the same event or situation.

21 **520 Regulations**

- 22 (1) The Governor-General may make regulations prescribing all
23 matters:
24 (a) required or permitted by this Act to be prescribed; or
25 (b) necessary or convenient to be prescribed for carrying out or
26 giving effect to this Act.

Section 521

- 1 (2) The regulations may prescribe penalties for offences against the
2 regulations. A penalty must not be more than 50 penalty units.
- 3 (3) Regulations may be made for and in relation to giving effect to any
4 of the following agreements:
- 5 (a) the Apia Convention;
6 (b) the Convention for the Protection of the Natural Resources
7 and Environment of the South Pacific (the SPREP
8 Convention) signed at Noumea on 24 November 1986;
9 (c) the Bonn Convention;
10 (d) CAMBA;
11 (e) JAMBA;
12 (f) an agreement between the Commonwealth and one or more
13 other countries relating to whales;
14 (g) the World Heritage Convention;
15 (h) the Ramsar Convention;
16 (i) the Biodiversity Convention;
17 (j) CITES.
- 18 (4) Regulations made in relation to an agreement that has not entered
19 into force for Australia are not to come into operation on a day
20 earlier than the day on which the agreement enters into force for
21 Australia.
- 22 (5) Subsection (3) does not limit subsection (1).

23 **521 Fees and charges must not be taxes**

24 A fee or charge provided for by or under this Act, and whether
25 prescribed by the regulations or not, must be reasonably related to
26 the expenses incurred or to be incurred by the Commonwealth in
27 relation to the matters to which the fee or charge relates and must
28 not be such as to amount to taxation.

Section 522

1 **522 Financial assistance etc. to be paid out of appropriated money**

2 Payment of amounts of financial assistance under this Act, and of
3 any amounts that the Commonwealth is required to pay to a person
4 under this Act or an agreement made under this Act, are to be made
5 out of money appropriated by the Parliament for the purpose.

1
2 **Chapter 8—Definitions**

3 **Part 23—Definitions**

4 **Division 1—Some definitions relating to particular topics**

5 **Subdivision A—Actions**

6 **523 Actions**

7 (1) Subject to this Subdivision, *action* includes:

- 8 (a) a project; and
9 (b) a development; and
10 (c) an undertaking; and
11 (d) an activity or series of activities; and
12 (e) an alteration of any of the things mentioned in paragraph (a),
13 (b), (c) or (d).

14 (2) However, a lawful continuation of a use of land, sea or seabed that
15 was occurring immediately before the commencement of this Act
16 is not an *action*. For this purpose, an enlargement, expansion or
17 intensification of use is not a *continuation* of a use.

18 **524 Things that are not actions**

19 (1) This section applies to a decision by each of the following kinds of
20 person (*government body*):

- 21 (a) the Commonwealth; or
22 (b) a Commonwealth agency; or
23 (c) a State; or
24 (d) a self-governing Territory; or
25 (e) an agency of a State or self-governing Territory; or
26 (f) an authority established by a law applying in a Territory that
27 is not a self-governing Territory.

Chapter 8 Definitions

Part 23 Definitions

Division 1 Some definitions relating to particular topics

Section 525

- 1 (2) A decision by a government body to grant a governmental
2 authorisation (however described) for another person to take an
3 action is not an *action*.
- 4 (3) To avoid doubt, a decision by the Commonwealth or a
5 Commonwealth agency to grant a governmental authorisation
6 under one of the following Acts is not an *action*:
7 (a) the *Customs Act 1901*;
8 (b) the *Export Control Act 1982*;
9 (c) the *Export Finance and Insurance Corporation Act 1991*;
10 (d) the *Fisheries Management Act 1991*;
11 (e) the *Foreign Acquisitions and Takeovers Act 1975*;
12 (f) the *Petroleum (Submerged Lands) Act 1967*;
13 (g) the *Quarantine Act 1908*;
14 (h) the *Trade Practices Act 1974*.
15 This subsection does not limit this section.

16 **Subdivision B—Areas**

17 **525 Commonwealth areas**

18 *What is a Commonwealth area?*

- 19 (1) Each of the following, and any part of it, is a *Commonwealth area*:
20 (a) land owned by the Commonwealth or a Commonwealth
21 agency (including land owned in Norfolk Island) and
22 airspace over the land;
23 (b) an area of land held under lease by the Commonwealth or a
24 Commonwealth agency (including an area held under lease in
25 Norfolk Island) and airspace over the land;
26 (c) land in:
27 (i) an external Territory (except Norfolk Island); or
28 (ii) the Jervis Bay Territory;
29 and airspace over the land;
30 (d) the coastal sea of Australia or an external Territory;

- 1 (e) the continental shelf, and the waters and airspace over the
2 continental shelf;
3 (f) the waters of the exclusive economic zone, the seabed under
4 those waters and the airspace above those waters;
5 (g) any other area of land, sea or seabed that is included in a
6 Commonwealth reserve.

7 *Territory Land in ACT is not a Commonwealth area*

- 8 (2) Despite paragraph (1)(a), an area of land that is Territory Land,
9 within the meaning of the *Australian Capital Territory (Planning*
10 *and Land Management) Act 1988* is not a **Commonwealth area**
11 merely because of that paragraph, unless it is held under lease by
12 the Commonwealth or a Commonwealth agency.

13 *Coastal waters of States and NT are not Commonwealth areas*

- 14 (3) Despite paragraphs (1)(d), (e) and (f), none of the following areas
15 (or parts of them) are **Commonwealth areas**:
16 (a) the seabed vested in a State under section 4 of the *Coastal*
17 *Waters (State Title) Act 1980*; and
18 (b) the seabed vested in the Northern Territory under section 4 of
19 the *Coastal Waters (Northern Territory Title) Act 1980*; and
20 (c) the subsoil under the seabed described in paragraph (a) or
21 (b); and
22 (d) any water and airspace over seabed described in paragraph
23 (a) or (b).

24 **Subdivision C—Entities**

25 **526 Subsidiaries of bodies corporate**

26 The question whether a body corporate is a subsidiary of a body or
27 company is to be determined in the same way as the question
28 whether a body corporate is a subsidiary of another body corporate
29 is determined for the purposes of the Corporations Law.

Chapter 8 Definitions

Part 23 Definitions

Division 1 Some definitions relating to particular topics

Section 527

1 **Subdivision D—Criminal law**

2 **527 Convictions**

3 A reference in this Act to a conviction of a person of an offence
4 includes a reference to making an order under section 19B of the
5 *Crimes Act 1914* in relation to the person in respect of the offence.

1

2 **Division 2—General list of definitions**

3 **528 Definitions**

4

In this Act, unless the contrary intention appears:

5

acquisition of property has the meaning given by subsection
6 519(2).

7

action has the meaning given by Subdivision A of Division 1 of
8 Part 23.

9

agency of a State or self-governing Territory means:

10

(a) a Minister of the State or Territory; or

11

(b) a body corporate established for a public purpose by a law of
12 the State or Territory; or

13

(c) a body corporate established by:

14

(i) the Governor of the State; or

15

(ii) if the Territory is the Australian Capital Territory—the
16 Governor-General acting in relation to the Australian
17 Capital Territory; or

18

(iii) if the Territory is the Northern Territory or Norfolk
19 Island—the Administrator of the Territory; or

20

(iv) a Minister of the State or Territory;

21

otherwise than by or under a law of the Territory; or

22

(d) a company in which the whole of the shares or stock, or
23 shares or stock carrying more than one-half of the voting
24 power, is or are owned by or on behalf of the State or
25 Territory; or

26

(e) a body corporate that is a subsidiary of:

27

(i) a body or company referred to in paragraph (b), (c) or
28 (d); or

29

(ii) a body corporate that, because of a previous application
30 or previous applications of this paragraph, is taken to be

Section 528

- 1 an agency of the State or Territory for the purposes of
2 this definition; or
3 (f) a person holding, or performing the duties of:
4 (i) an office established by or under a law of the State or
5 Territory (except a judicial office or an office of
6 member of a tribunal); or
7 (ii) an appointment made under a law of the State or
8 Territory (except appointment to a judicial office or an
9 office of member of a tribunal); or
10 (g) a person holding, or performing the duties of, an appointment
11 made by:
12 (i) the Governor of the State; or
13 (ii) if the Territory is the Australian Capital Territory—the
14 Governor-General acting in relation to the Australian
15 Capital Territory; or
16 (iii) if the Territory is the Northern Territory or Norfolk
17 Island—the Administrator of the Territory; or
18 (iv) a Minister of the State or Territory;
19 otherwise than by or under a law of the State or Territory.

20 **aircraft** means an apparatus that can derive support in the
21 atmosphere from the reactions of the air.

22 **animal** means any member, alive or dead, of the animal kingdom
23 (other than a human being).

24 **Apia Convention** means the Convention on Conservation of Nature
25 in the South Pacific, signed at Apia, Western Samoa, on 12 June
26 1976, as in force for Australia immediately before the
27 commencement of this Act.

28 Note: The English text of the Convention is set out in Australian Treaty
29 Series 1990 No. 41.

30 **article** includes a substance or a mixture of substances.

31 **assess** an action includes assess the impacts that the action:

- 32 (a) has or will have; or
-

1 (b) is likely to have.

2 **assessment report** has the meaning given by subsection 130(2).

3 **Australian aircraft** has the meaning given by subsection 5(5).

4 **Australian Biosphere reserve management principles** has the
5 meaning given by section 340.

6 **Australian IUCN reserve management principles** has the meaning
7 given by subsection 348(1).

8 **Australian jurisdiction** has the meaning given by subsection 5(5).

9 **Australian platform** has the meaning given by section 403.

10 **Australian Ramsar management principles** has the meaning given
11 by section 335.

12 **Australian vessel** has the meaning given by subsection 5(5).

13 **Australian World Heritage management principles** has the
14 meaning given by section 323.

15 **authorised officer** means:

- 16 (a) a warden; or
17 (b) an inspector.

18 **baggage** has the meaning given by section 443.

19 **bilateral agreement** has the meaning given by subsection 45(2).

20 **biodiversity** means the variability among living organisms from all
21 sources (including terrestrial, marine and other aquatic ecosystems
22 and the ecological complexes of which they are part) and includes:

- 23 (a) diversity within species and between species; and
24 (b) diversity of ecosystems.

25 **Biodiversity Convention** means the Convention on Biological
26 Diversity signed at Rio de Janeiro on 5 June 1992, as in force for
27 Australia immediately before the commencement of this Act.

Chapter 8 Definitions
Part 23 Definitions
Division 2 General list of definitions

Section 528

1 Note: The English text of this Convention is set out in Australian Treaty
2 Series 1993 No. 32.

3 **biological resources** includes genetic resources, organisms, parts
4 of organisms, populations and any other biotic component of an
5 ecosystem with actual or potential use or value for humanity.

6 **Biosphere reserve** has the meaning given by section 337.

7 **Board** means a Board established under section 377.

8 **Bonn Convention** means the Convention on the Conservation of
9 Migratory Species of Wild Animals signed at Bonn on 23 June
10 1979, as in force for Australia immediately before the
11 commencement of this Act.

12 Note: The English text of the Convention is set out in Australian Treaty
13 Series 1991 No. 32.

14 **business day** means a day that is not:

15 (a) a Saturday or a Sunday; or

16 (b) a public holiday or bank holiday in the place concerned.

17 **CAMBA** means the Agreement between the Government of
18 Australia and the Government of the People's Republic of China
19 for the protection of Migratory Birds and their Environment signed
20 at Canberra on 20 October 1986, as in force for Australia
21 immediately before the commencement of this Act.

22 Note: The English text of the Agreement is set out in Australian Treaty
23 Series 1988 No. 22.

24 **cetacean** means a member of the sub-order Mysticeti or
25 Odontoceti of the Order Cetacea, and includes a part of such a
26 member and any product derived from a such a member.

27 **CITES** means the Convention on International Trade in
28 Endangered Species of Wild Fauna and Flora done at Washington
29 on 3 March 1973, as in force for Australia immediately before the
30 commencement of this Act.

31 Note: The English text of the Convention is set out at Australian Treaty
32 Series 1976 No. 29.

- 1 ***civil penalty provision*** has the meaning given by section 482.
- 2 ***coastal sea*** of Australia or an external Territory has the same
3 meaning as in subsection 15B(4) of the *Acts Interpretation Act*
4 1901.
- 5 ***coastal waters*** of a State or the Northern Territory has the meaning
6 given by section 227.
- 7 ***commissioner*** means a person holding an appointment under
8 paragraph 107(1)(a).
- 9 ***Commonwealth agency*** means:
- 10 (a) a Minister; or
- 11 (b) a body corporate established for a public purpose by a law of
12 the Commonwealth; or
- 13 (c) a body corporate established by a Minister otherwise than
14 under a law of the Commonwealth; or
- 15 (d) a company in which the whole of the shares or stock, or
16 shares or stock carrying more than one-half of the voting
17 power, is or are owned by or on behalf of the
18 Commonwealth; or
- 19 (e) a body corporate that is a subsidiary of:
- 20 (i) a body or company referred to in paragraph (b), (c) or
21 (d); or
- 22 (ii) a body corporate that, because of a previous application
23 or previous applications of this paragraph, is taken to be
24 a Commonwealth agency for the purposes of this
25 definition; or
- 26 (f) a person holding, or performing the duties of:
- 27 (i) an office established by or under a law of the
28 Commonwealth (except a judicial office or office of
29 member of a tribunal); or
- 30 (ii) an appointment made under a law of the
31 Commonwealth (except an appointment to a judicial
32 office or office of member of a tribunal); or

Section 528

- 1 (g) a person holding, or performing the duties of, an appointment
2 made by the Governor-General, or by a Minister, otherwise
3 than under a law of the Commonwealth;
4 but does not include:
5 (h) a person holding an office established by or under any of the
6 following Acts, or holding an appointment made under any
7 of them:
8 (i) the *Northern Territory (Self-Government) Act 1978*;
9 (ii) the *Norfolk Island Act 1979*;
10 (iii) the *Australian Capital Territory (Self-Government) Act*
11 *1988*; or
12 (i) any of the following:
13 (i) an Aboriginal Land Trust, or an Aboriginal Land
14 Council, established under the *Aboriginal Land Rights*
15 *(Northern Territory) Act 1976*;
16 (ii) an Aboriginal corporation within the meaning of the
17 *Aboriginal Councils and Associations Act 1976*;
18 (iii) the Wreck Bay Aboriginal Community Council
19 established by the *Aboriginal Land Grant (Jervis Bay*
20 *Territory) Act 1986*; or
21 (j) a company prescribed by the regulations for the purposes of
22 this paragraph.
- 23 ***Commonwealth aircraft*** has the meaning given by section 403.
24 ***Commonwealth area*** has the meaning given by section 525.
25 ***Commonwealth land*** has the meaning given by section 27.
26 ***Commonwealth marine area*** has the meaning given by section 24.
27 ***Commonwealth reserve*** means a reserve declared under Division 4
28 of Part 15.
29 ***Commonwealth ship*** has the meaning given by section 403.
30 ***components of biodiversity*** has the meaning given by subsection
31 171(3).
-

1 **conservation agreement** means an agreement made under section
2 305.

3 **conservation dependent**: a native species may be included in the
4 **conservation dependent** category of the list of threatened native
5 species in accordance with Subdivision A of Division 1 of Part 13.

6 **conservation order** means an order made under section 464 (with
7 variations (if any) under section 466 or 469).

8 **constitutional corporation** means a corporation to which
9 paragraph 51(xx) of the Constitution applies.

10 **continental shelf** means the continental shelf (as defined in the
11 *Seas and Submerged Lands Act 1973*) of Australia (including its
12 external Territories).

13 **continuation** of a use of land, sea or seabed has the meaning given
14 by subsection 523(2).

15 **controlled action** has the meaning given by section 67.

16 **controlling provision** has the meaning given by section 67.

17 **convict** a person of an offence has a meaning affected by section
18 527.

19 **critically endangered**:

20 (a) a native species may be included in the **critically endangered**
21 category of the list of threatened native species in accordance
22 with Subdivision A of Division 1 of Part 13; and

23 (b) an ecological community may be included in the **critically**
24 **endangered** category of the list of threatened ecological
25 communities in accordance with Subdivision A of Division 1
26 of Part 13.

27 **cultural heritage** has the meaning given by subsection 12(4).

28 **daily newspaper** means a newspaper that is ordinarily published on
29 each day that is a business day in the place where the newspaper is

Section 528

1 published, whether or not the newspaper is ordinarily published on
2 other days.

3 ***declared Ramsar wetland*** has the meaning given by section 17.

4 ***declared World Heritage property*** has the meaning given by
5 section 13.

6 ***designated proponent*** of an action means the person designated
7 under Division 2 of Part 7 as the proponent of the action.

8 ***directed environmental audit*** has the meaning given by subsection
9 460(4).

10 ***ecological character*** has the meaning given by subsection 16(3).

11 ***ecological community*** means an assemblage of native species that:

- 12 (a) inhabits a particular area in nature; and
13 (b) meets the additional criteria specified in the regulations (if
14 any) made for the purposes of this definition.

15 ***ecologically sustainable use*** of natural resources means use of the
16 natural resources within their capacity to sustain natural processes
17 while maintaining the life-support systems of nature and ensuring
18 that the benefit of the use to the present generation does not
19 diminish the potential to meet the needs and aspirations of future
20 generations.

21 ***ecosystem*** means a dynamic complex of plant, animal and
22 micro-organism communities and their non-living environment
23 interacting as a functional unit.

24 ***eligible seizable item*** means anything that would present a danger
25 to a person or that could be used to assist a person to escape from
26 lawful custody.

27 ***endangered:***

- 28 (a) a native species may be included in the ***endangered*** category
29 of the list of threatened native species in accordance with
30 Subdivision A of Division 1 of Part 13; and
-

1 (b) an ecological community may be included in the *endangered*
2 category of the list of threatened ecological communities in
3 accordance with Subdivision A of Division 1 of Part 13.

4 *environment* includes:

- 5 (a) ecosystems and their constituent parts, including people and
6 communities; and
7 (b) natural and physical resources; and
8 (c) the qualities and characteristics of locations, places and
9 areas; and
10 (d) the social, economic and cultural aspects of a thing
11 mentioned in paragraph (a), (b) or (c).

12 *environmental authority* has the meaning given by subsection
13 458(4).

14 *evidential material* has the meaning given by subsection 406(2).

15 *exclusive economic zone* means the exclusive economic zone (as
16 defined in the *Seas and Submerged Lands Act 1973*) of Australia
17 (including its external Territories).

18 *executing officer*, for a warrant, means the person named in the
19 warrant as being responsible for executing the warrant.

20 *executive officer* of a body corporate has the meaning given by
21 section 493.

22 *extinct*: a native species may be included in the *extinct* category of
23 the list of threatened native species in accordance with Subdivision
24 A of Division 1 of Part 13.

25 *extinct in the wild*: a native species may be included in the *extinct*
26 *in the wild* category of the list of threatened native species in
27 accordance with Subdivision A of Division 1 of Part 13.

28 *Federal Court* means the Federal Court of Australia.

29 *foreign whaling vessel* has the meaning given by subsection
30 236(5).

Section 528

- 1 **forestry operations** has the meaning given by subsection 40(2).
- 2 **frisk search** has the meaning given by subsection 413(3).
- 3 **genetic resources** means any material of plant, animal, microbial
4 or other origin that contains functional units of heredity and that
5 has actual or potential value for humanity.
- 6 **goods** has the meaning given by section 443.
- 7 **habitat** means the biophysical medium or media:
8 (a) occupied (continuously, periodically or occasionally) by an
9 organism or group of organisms; or
10 (b) once occupied (continuously, periodically or occasionally) by
11 an organism, or group of organisms, and into which
12 organisms of that kind have the potential to be reintroduced.
- 13 **holder** means:
14 (a) in the case of a permit issued under Chapter 5—the person to
15 whom the permit was issued or transferred, as the case may
16 be; or
17 (b) in the case of an approval under Part 9—the person to whom
18 the approval applies.
- 19 **imported** in relation to a cetacean or foreign whaling vessel means
20 brought into the Australian jurisdiction.
- 21 **indigenous people's land** has the meaning given by subsection
22 363(3).
- 23 **indigenous person** has the meaning given by subsection 363(4).
- 24 **indigenous tradition** has the meaning given by section 201.
- 25 **inspector** means:
26 (a) a person appointed as an inspector under section 396;
27 (b) a person who is an inspector because of section 397; or
28 (c) a person who is an inspector because of an arrangement
29 entered into under section 398.

- 1 ***interested person*** has the meaning given by section 475.
- 2 ***interfere*** with a cetacean has the meaning given by subsection
3 229(4).
- 4 ***IUCN category*** has the meaning given by subsection 346(1).
- 5 ***JAMBA*** means the Agreement between the Government of Japan
6 and the Government of Australia for the Protection of Migratory
7 Birds and Birds in Danger of Extinction and their Environment
8 signed at Tokyo on 6 February 1974, as in force for Australia
9 immediately before the commencement of this Act.
- 10 Note: The English text of the Agreement is set out in Australian Treaty
11 Series 1981 No. 6.
- 12 ***jointly managed reserve*** has the meaning given by subsection
13 363(5).
- 14 ***Kakadu National Park*** has the meaning given by subsection
15 387(3).
- 16 ***Kakadu region*** has the meaning given by subsection 386(1).
- 17 ***keep*** a cetacean or member of a listed threatened species, listed
18 migratory species, listed marine species or listed threatened
19 ecological community means:
- 20 (a) in the case of a cetacean, or a species of animal or
21 community of animals—have charge or possession of the
22 cetacean or member, either in captivity or in a domesticated
23 state; and
- 24 (b) in the case of a species of plant or community of plants—
25 have possession of the member.
- 26 ***key threatening process*** means a threatening process included in
27 the list referred to in section 183.
- 28 ***land*** has the meaning given by subsection 345(2).
- 29 ***land council*** for indigenous people’s land has the meaning given
30 by subsection 363(2).
-

Section 528

- 1 **large-scale disposal facility** for radioactive waste has a meaning
2 affected by subsection 22(2).
- 3 **list** includes a list containing no items.
- 4 **listed marine species** means a marine species included in the list
5 referred to in section 248.
- 6 **listed migratory species** means a migratory species included in the
7 list referred to in section 209.
- 8 **listed threatened ecological community** means an ecological
9 community included in the list referred to in section 181.
- 10 **listed threatened species** means a native species included in the list
11 referred to in section 178.
- 12 **magistrate** means a magistrate who is remunerated by salary or
13 otherwise.
- 14 **master** of a foreign whaling vessel has the meaning given by
15 subsection 236(5).
- 16 **matter protected** by a provision of Part 3 has the meaning given by
17 section 34.
- 18 **member** of a listed threatened species, listed migratory species,
19 listed marine species or listed threatened ecological community,
20 includes, in the case of a species of animal or community of
21 animals, the whole or part of the dead body of the member.
- 22 **mineral** has the meaning given by subsection 355(3).
- 23 **mining operations** has the meaning given by subsection 355(2).
- 24 **monitoring power** relating to premises has the meaning given by
25 section 407.
- 26 **monitoring warrant** has the meaning given by section 409.
- 27 **native species** means a species:
-

- 1 (a) that is indigenous to Australia or an external Territory; or
2 (b) that is indigenous to the seabed of the coastal sea of Australia
3 or an external Territory; or
4 (c) that is indigenous to the continental shelf; or
5 (d) that is indigenous to the exclusive economic zone; or
6 (e) members of which periodically or occasionally visit:
7 (i) Australia or an external Territory; or
8 (ii) the exclusive economic zone; or
9 (f) that was present in Australia or an external Territory before
10 1400.

11 Note: A reference to Australia or an external Territory includes a reference
12 to the coastal sea of Australia or the Territory. See section 15B of the
13 *Acts Interpretation Act 1901*.

14 ***natural heritage*** has the meaning given by subsection 12(4).

15 ***nuclear action*** has the meaning given by subsection 22(1).

16 ***nuclear installation*** has the meaning given by subsection 22(1).

17 ***nuclear reactor*** has the meaning given by subsection 22(1).

18 ***occupier*** of premises means the person apparently in charge of the
19 premises.

20 ***officer assisting***, in relation to a warrant, means:

- 21 (a) an authorised officer who is assisting in executing the
22 warrant; or
23 (b) a person who is not an authorised officer, but who has been
24 authorised by the relevant executing officer to assist in
25 executing the warrant.

26 ***officer of Customs*** has the same meaning as it has in the *Customs*
27 *Act 1901*.

28 ***ordinary search*** has the meaning given in subsection 414(3).

29 ***organism*** includes:

- 30 (a) a virus; and
-

Section 528

- 1 (b) the reproductive material of an organism; and
2 (c) an organism that has died.

3 **plant** means a member, alive or dead, of the plant kingdom or of
4 the fungus kingdom, and includes a part of a plant and plant
5 reproductive material.

6 **plant reproductive material** means:

- 7 (a) a seed or spore of a plant; or
8 (b) a cutting from a plant; or
9 (c) any other part, or product, of a plant from which another
10 plant can be produced.

11 **population** of a species or ecological community means an
12 occurrence of the species or community in a particular area.

13 **precautionary principle** has the meaning given by subsection
14 391(2).

15 **premises** includes a place, vehicle, vessel and aircraft.

16 **prescribed waters** means waters in respect of which regulations
17 made for the purposes of section 226 are in force.

18 **principles of ecologically sustainable development** has the
19 meaning given by subsection 136(3).

20 **radioactive waste** has the meaning given by subsection 22(1).

21 **Ramsar Convention** means the Convention on Wetlands of
22 International Importance especially as Waterfowl Habitat adopted
23 by the International Conference on the Conservation on Wetlands
24 and Waterfowl at Ramsar, Iran, on 2 February 1971, as in force for
25 Australia immediately before the commencement of this Act.

26 Note: The English Text of the Convention is set out in Australian Treaty
27 Series 1975 No. 48.

28 **range** of a species means the area where members of the species
29 live, feed, breed or visit periodically or regularly.

- 1 **ranger** means a person holding an appointment as a ranger under
2 Part 17.
- 3 **recovery plan** means a plan of a kind referred to in section 267 that
4 has been made or adopted under that section.
- 5 **regional forest agreement** has the meaning given by subsection
6 38(2).
- 7 **relevant impacts** of an action has the meaning given by section 82.
- 8 **reprocessing** has the meaning given by subsection 22(1).
- 9 **RFA forestry operations** has the meaning given by subsection
10 38(2).
- 11 **RFA region** has the meaning given by section 41.
- 12 **Scientific Committee** means the Threatened Species Scientific
13 Committee established by section 502.
- 14 **seabed** has the meaning given by subsection 345(2).
- 15 **Secretary** means the Secretary to the Department that:
16 (a) deals with the matter to which the provision containing the
17 reference relates; and
18 (b) is administered by the Minister administering the provision.
- 19 **self-governing Territory** means:
20 (a) the Australian Capital Territory; or
21 (b) the Northern Territory; or
22 (c) Norfolk Island.
- 23 **species** means a group of biological entities that:
24 (a) interbreed to produce fertile offspring; or
25 (b) possess common characteristics derived from a common
26 gene pool;
27 and includes:
28 (c) a sub-species; and
-

Section 528

1 (d) a distinct population of such biological entities that the
2 Minister has determined, under section 517, to be a species
3 for the purposes of this Act.

4 Note: Determinations under paragraph (d) are disallowable instruments. See
5 section 517.

6 *spent nuclear fuel* has the meaning given by subsection 22(1).

7 *subsidiary* of a body corporate has a meaning affected by section
8 526.

9 *sub-species* means a geographically separate population of a
10 species, being a population that is characterised by morphological
11 or biological differences from other populations of that species.

12 *terms of reference* has the meaning given by paragraph 107(1)(b).

13 *territorial sea* means the territorial sea (as defined in the *Seas and*
14 *Submerged Lands Act 1973*) of Australia (including its external
15 Territories).

16 *threat abatement plan* means a plan of a kind referred to in section
17 267 that has been made or adopted under that section.

18 *threatening process* has the meaning given by subsection 188(3).

19 *trade* a cetacean or member of a listed threatened species, listed
20 migratory species, listed marine species or threatened ecological
21 community includes:

- 22 (a) buy the cetacean or member, agree to receive it under an
23 agreement to buy, agree to accept it under such an agreement
24 or acquire it by barter; or
25 (b) sell the cetacean or member, offer it for sale, agree to sell it,
26 have it in possession for the purpose of sale, deliver it for the
27 purpose of sale, receive it for the purpose of sale or dispose
28 of it by barter for the purpose of gain or advancement; or
29 (c) export the cetacean or member from Australia or an external
30 Territory or import it into Australia or an external Territory;
31 or
-

1 (d) cause or allow any of the acts referred to in paragraph (a), (b)
2 or (c) to be done.

3 **traditional owners** of indigenous people's land has the meaning
4 given by subsection 368(4).

5 **treat** a cetacean has the meaning given by subsection 229(4).

6 **Uluru-Kata Tjuta National Park** has the meaning given by
7 subsection 344(3).

8 **Uluru region** has the meaning given by subsection 386(2).

9 **usage right** has the meaning given by subsection 350(7).

10 **vehicle** includes a hovercraft.

11 **vessel** means a ship, boat, raft or pontoon or any other thing
12 capable of carrying persons or goods through or on water and
13 includes a floating structure and hovercraft.

14 **vulnerable:**

15 (a) a native species may be included in the **vulnerable** category
16 of the list of threatened native species in accordance with
17 Subdivision A of Division 1 of Part 13; and

18 (b) an ecological community may be included in the **vulnerable**
19 category of the list of threatened ecological communities in
20 accordance with Subdivision A of Division 1 of Part 13.

21 **warden** means a person holding an appointment as a warden under
22 Part 17.

23 **warrant premises** means premises in relation to which a warrant is
24 in force.

25 **wetland** has the same meaning as in the Ramsar Convention.

26 **whale watching** has the meaning given by section 238.

27 **wildlife conservation plan** means a plan of a kind referred to in
28 section 285 that has been made or adopted under that section.

Section 528

1 ***World Heritage Convention*** means the Convention for the
2 Protection of the World Cultural and Natural Heritage adopted by
3 the General Conference of the United Nations Educational,
4 Scientific and Cultural Organization in Paris on 23 November
5 1972, as in force for Australia immediately before the
6 commencement of this Act.

7 Note: The English text of the Convention is set out in Australian Treaty
8 Series 1975 No. 47.

9 ***World Heritage List*** means the list kept under that title under
10 Article 11 of the World Heritage Convention.

11 ***world heritage values*** of a property has the meaning given by
12 subsection 12(3).